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LABOUR MANAGEMENT

M.A.,(Labour Manager
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LABOUR LEGIS
AND HUMA

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Dear Student,

Labour plays a very important and indispensable role in the overall industrial growth. After dependence, labour legislations have made great strides towards improving working conditions, employer-employee relations and gradually raising the standards of living of the working classes.

Labour legislations have occupied a significant place in modem democratic states. With the growing complexities of the present industrial and commercial society the scope of the legislations have expanded remarkably. The aim of labour legislations is the promotion of social justice and social security. The field of industrial laws covers a large number of enactments. There is no single labour code in our country. We have different statutes dealing with different branches of industrial law. To the Labour management students, the study of the Labour Legislations is highly useful and indispensable.

The subject of labour legislations is divided 10 units. In addition to the study material students are advised to go through the relevant statutes, to have a thorough understanding of the provisions. In each lesson, suggested questions for exercise are given

Lesson 1 to 5 deals with Labour Legislation and Lessons 6 to 10 deals with Human Rights.

Department of Labour Studies

M.A. (Labour Management)

Labour Legislations and Human Rights

Syllabus

Labour Legislations

Unit - I

Introduction - Origin and Nature of Industrial Jurisprudence - Master and Servant - Principles of Labour Legislation - Social Justice - Social Security - Labour Legislations in India - India and the International Labour Organisation.

Unit - II

Legislations relating to Industrial Relation

a) The Trade Union Act, 1926 - Definitions - Registration of Trade Union Rights and Liabilities of Registered Trade Union - Amalgamations of Trade Unions - Dissolution of Trade Union.

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c) The Industrial Dispute Act of 1947 - Definitions - Authorities Statutory, Industrial Relations, Machineries - Strike - Lockout - Lay-Off - Retrenchment - Closure - Unfair Labour Practices.

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Labour Legislations Relating to Wages

(a) The payment of wages Act 1936 - Definitions - Various deductions Authorities.

(b) The payment of Minimum Wages Act, 1948 - Definition - Fixing minimum wages - Advisory Board - Claims.

(c) The payment of Bonus Act, 1965 - Definitions - Calculations of Bonus - Set on and Set off provisions - Time Limit.

Unit - IV

Labour Legislations Relating to Factory

The Factories Act, 1948 - Definitions - Authority - Health - Safety - Welfare - Leave with wages - Working Condition Women, Child, Adolescent and Adult.

Unit - V

Labour Legislations relating to Social Security Measures

(a) The Workmen's Compensation Act of 1948, - Authority, Health - Safety - Welfare leave with Wages - Working conditions for Women, Child, Adolescent and Adult.

(b) The Employees State Insurance Act, 1948 - Definitions - Rate of contribution and Benefits - Disputes - Claim - Penalties.

(c) The Employees Provident Fund and Miscellaneous Provisions Act 1952 - Definitions - Employee's Provident Fund Scheme - Pension scheme - Deposit Linked Insurance scheme - Authourity - Penalties.

(d) The Maternity Benefits Act, 1963 - Definitions - Maternity Benefits - Inspectors.

(e) The Payment of Gratuity Act 1972 - Definitions - Payment of Gratuity - Nominations - Recovery.

Human Rights

Unit - VI

Meaning, Nature and Definitions of Human Rights - Historical Development Characteristics of Human Rights - Theories of Human Rights - Rationale of Human Rights

Unit - VII

International Organisations and Human Rights. UNO Universal Declaration of Human Rights

Unit - VIII

Indian Constitution and Human Rights - Fundamental Duties and Rights - Principles of State Policy - Civil and Political Rights.

Unit IX

Issues in Human Rights - Capital Punishment - Bonded Labour and Wages Female (infanticide - Right to Dissent - SC and ST.

Unit - X

Women's Rights - Children's Rights - Refugees Rights - Human Rights Machinery in India - National Human Rights Commission - State Human Rights Commissions.

Books for Reference

Labour Relations Law in India	- Agarwal.
Labour and Industrial Laws	- S.N. Misra.
Labour Laws	- S. Krishnasamy
Labour Law	- S.K. Puri.
A Study of Industrial Law	- G.M. Khothari & A.G .Khothari
Human Rights	- Any author.

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LESSON - I

LABOUR LEGISLATION IN INDIA AND INTERNATIONAL LABOUR ORGANISATION (ILO)

Origin and nature of Industrial Jurisprudence

The concept-of industrial jurisprudence in our Country has been developed only after independence. The growth of industrial jurisprudence can be noticed not only from increase in labour and industrial legislations but also from a large number of industrial law matters decided by the Supreme Court and High courts. This branch of law has modified the traditional law relating to master and servant. The growth of industrial legislations had cut down the old theory of Laissez-faire based upon the freedom of contract in the larger interest of the society because that theory was found wanting for the development of harmonious relations between the employers and employees. The traditional right of an employer to hire and fire his will has been subjected to many restraints.

In England as well as in the United States labour legislation dates from the Nineteenth Century Much of this legislation we designed to promote safety and to protect the health of the workmen. Labour legislation in India grew with the growth of industry

Laissez faire and state regulation of labour

The old doctrine of laissez faire based upon the freedom of contract, which was observed and practiced since the time of Adam Smith has practically given place to a doctrine which emphasize the duty of the State to interfere in the affairs of individuals in the interest of the social well being of the entire community. That is, a shift from the doctrine of 'laissez faire to a 'welfare state'. The doctrine of absolute freedom of contract has thus to yield to the higher claims for social justice. For example, where an employer wants to exercise his right to employ labourers on any wages he likes. However, industrial adjudication does not recognize the employer's right to employ labour on terms below the terms of minimum basic wage. This no doubt is an interference with the employer's right to hire labour but social justice requires that the right should be controlled.

Industrialization in its early period encouraged economic laissez faire but later made the need for state intervention, with a view to ameliorating the lot of industrial worker compelling. The growth of humanitarian idealism prompted the state to undertake protection against unemployment, sickness, old age etc. The economic struggle of labour and capital is fought collective by organized labourers. With a view provide economic justice by ensuring fair return to the by labour that the state as the custodian of public intervenes State regulation.

Master and Servant

Similarly there is change in the concept of Matter and Servant. One who invests capital is no more servant. They are employer and employees. The interest of the employee is in many respects protected by legislation.

The factor that lead to this departure from the old theories of the law of contract and the law of master and servant, is industrialization. Industrialization in India brought with it some new socio-economic problems. The increase in the cost of living resulted consistent demand from labour for increase in wages: Democratic ideas have also grown simultaneously with the growth of industrialization in our country.

Out of the struggle between workers demanding for better share in the production and profit of the industry and the employers hesitation to part with it beyond a certain limit have grown the recognition of certain principles. These basic principles are -

1. The right of workmen to combine and form association or unions.

2. The right of workmen to bargain collectively for the betterment of their conditions of service.

3. A shift from the doctrine of laissez faire to a welfare state.

4. Tripartite consolation i.e. settlement of industrial disputes through the participation of workers, employers and the Government.

5. The State can no more be a natural of looker but must interfere as the protector of social good.

Principles of Labour Legislation

Labour Legislation is based on the principles social justice, social equity and national economy.

Social justice implies equitable distribution of profits and other benefits of industry between employer and workers. Providing protection to the workers, against harmful effect to their health. safety and morality, is another object of social justice. Social justice is justice according to social interest. Social justice does not mean doing everything for the welfare of labour to the utter disregard of the employer. The balance of social justice leans neither side. Social justice, therefore, is dealing equitably and fairly not between individuals but between classes of society, the rich and the poor. The concept of social justice has become an integral part of industrial law. It is founded on the basic idea of socio-economic equality. The constitution of India has also affirmed social and economic justice to all its citizens. Art, 38 of the constitution provides that "the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life" . According to Art 39, it shall be the

duty of the state to apply certain principles of social justice in making laws, Social justice has thus been made object of state policy.

Social Security

Social security means a guarantee provided by the state through its appropriate agencies, against certain risks to which the members of the society may be exposed Social security envisages that the members of a community shall be protected by collective action against social risks causing undue hardship and privation to individuals whose private resources can seldom be adequate to meet them.

Accordingly social security is that a society guarantees help and assistance to sick, disabled, destitute, aged and those who are temporarily incapacitated and need other's help. It enable workers to become more efficient and thus reduce wastage arising from industrial disputes. Lack of social impedes production and prevents formation of a stable and efficient labour force. Therefore social security measures are not a burden but a wise investment which yield good dividends.

The international Seminar on Social security adopted in 1952 embodies universally accepted basic principles and common standards of social security. Art, 22 of the Universal Declaration of Human Rights has rightly emphasized the importance of social security in the following words "Every one as a member of the society has the right to social security and is entitled to realization through national efforts and international co-operation and in accordance with the organization and resources of each state of economic, social and cultural rights indispensable for his dignity and the free development of his personality"

Social Security in India

There are several schemes providing social security to the workers against such contingencies as ill health industrial accidents, maternity etc. In our country a number of social security legislations have been enacted from time to time. The earliest one was the Workmen's Compensation Act which ensures payment of compensation in case of a personal injury caused by an accident arising out of and in the course of employment.

The Employee's State Insurance Act, 1948. The Employees, Provident Fund and Family Pension Fund and Deposit Linked Insurance Fund Act, 1952, Maternity Benefits Act, 1961 and the Payment of Gratuity Act are some of the other Social security legislations.

Labour Legislation in India

Labour legislation in India grew with the growth of industry. In India plantation industry in Assam was the first to attract legislative control. Workers who were recruited

in this industry through professional recruiters faced several hardships. A number of Acts were passed from 1863 on wards to regulate the recruitment's These legislation protected more the interests of the employers than safeguarded the interests of the workers. Then the Factories Act was passed in 1881 and the Mines Act in 1901.

In India a number of labour legislations have been enacted to promote the conditions of the labour keeping in view of the development of industry and national economy. Industrial jurisprudence in our country is a development of mainly post independence period. Since independence both legislation and public opinion have done a lot to better the condition of the workers. After independence it was largely felt that the labour policy must emphasize upon self-reliance on the part of the workers. When V.V. Giri was the Labour Minister all official pronouncements emphasized that labour should become self-reliant. Tripartism became the central theme i.e., the trade union representing the workers, the employers, and the Government, meet together discuss the points in dispute and strive to reach a consensus. The various Annual Labour Conferences emphasized the team of tripartism and advocated many things such as, workers participation in management, worker's education, works committee and minimum wage legislations. The Conference also advocated the parties to avoid strikes and lockout without notice and to rely on settlement of disputes by discussions by voluntary arbitration or such measures as the law may provide.

The most important enactment that was passed during the pre-independence period was the workmen's compensation Act, 1923. But the post independence period witnessed the rapid growth of labour legislation in India. Social security legislation, like Employees State Insurance Act, 1948, the Employees Provident Funds Act, 1952 were passed. To regulate labour management relations, Industrial Disputes Act, 1947, and the industrial Employment (standing orders) Act, were passed. To ensure labour welfare, legislations like the Factories Act, 1948, Minimum wages Act, 1948, Payment of Bonus Act, 1965 etc., were also passed.

India and the International Labour Organization Object

An international organization, namely the International Labour Organization. To regulate the conditions of labour was established in 1919. The outbreak of the First world war brought into the existence of many important labour problems. It was realized that these could be solved only through the regulation by a permanent and active international agency. Versailles Pence Conference of 1919 recommended for the establishment of the International Labour Organization and on June 28th 1919, it was established as an organ other League of Nations. In 1946, when a new international political organization known as the United Nations came into existence to replace the defunct League of Nations, the I.L.O. entered into relationship with the United National and became one of its specialized agencies.

The main aims of the I.L.O are :

1) to remove injustice, hardship and privation of toiling people all over the world.

2) to improve their standard of living and working conditions.

3) by these steps to secure the permanent peace and harmony of the world.

The I.L.O. operates through three main organs. They are (1) the International Labour Conference (2) the Governing Body and (3) the International Labour office.

The International Labour Conference consists of four representative from each member state. Of these four representative, two represent the Government one represents the employer and one is the representative of the workers. Thus, this body is tripartite in character.

The Conference is the main policy making or legislative body of the I.L.O. It discusses the international labour problems in full length and passes the resolutions take the form of either Conventions of Recommendations. The Conventions of Recommendation rest standards for the domestic labour legislation.

The Governing Body is the executive organ of the I.L.O. consisting of 48 members, out of which 24 represent the Government, 12 represent the labour and 12 represent the employers

The International labour office is the permanent secretariat of the I.L.O. and is situated at Geneva. The International Labour office collects information on the conditions of industrial life and labour, prepares documents for the meetings of the International Labour Conference and the Governing Body makes a survey of the application of the Conventions and Recommendations by the member states. It also brings out publications on the problems of industry and labour of international interest.

When a resolution is adopted by the International Labour conference, it places and obligation on the Government of each member state to present the recommendations within a period of one year or within a period of 18 months in exceptional cases from the closing of the session of the conference for ratification. A member state by planting the resolution before the legislative authority, is free to ratify. Not only the conventions but also the Recommendations of the I.L.O. exercise influence on labour legislations in India.

Many of the recommendations of the conference have been ratified by India and suitable amendments were made to give effect to such resolutions in various enactments, (e.g., Factories Act, the Mines Act, Railways Act, Workmen's compensations Act, Maternity Benefits Act, etc.). Among those Recommendations, the following are important, namely, Lead Poisoning (women and children), persons, Forced Labour

(Regulation), welfare facilities, Voluntary Conciliation and Arbitration and Examination of Grievances.

Thus I.L.O. has influenced the course of Indian labour legislation to a great extent I.L.O. had been instrumental in stimulating public interest in labour question and, at times, initiating measures which might not otherwise have been adopted. The Report of the Royal commission on labour also plays a tribute to the I.L.O. for the progress of Indian labour which it has brought about directly and indirectly.

Suggested Question

Explain the effects of I.L.O. on labour legislations in India.

LESSON - 2

LEGISLATIONS RELATING TO INDUSTRIAL RELATIONS

(A) THE TRADE UNION ACT, 1926

Origin and Growth

The growth of Trade Unionism in India can be traced back to 1890, when the Bombay Mill Hands Association was formed for the redressal of grievance of the Bombay Mill workers. However this Association could not be treated as trade Union the strict sense. After the First world war, there were number of strikes by industrial and factory workers due to economic discontent. On many occasions these strikes were successful in getting the demands of the workers fulfilled. The established of International Labour Organization has also influenced the growth of trade union movement in our country.

In the year 1920, the Madras High Court in a suite held by Binny & Co., Ltd., against the Textile labour union, granted an injunction restraining~ the union officials from inducing the workers to break their contracts of employment by not returning to their work, with the result, the leaders of the Trade union activities. Hence, the necessity for legislative protection was felt by Trade Unions.

In 1921, N.M. Joshi who was the General Secretary of All India Trade Union Congress successfully moved a resolution in the Central Legislative Assembly seeking introduction of some legislation by the Government for protection of Trade Unions. This move was strongly opposed by the employers: Because of stiff opposition from the employers, that the passing of the Indian Trade Union Act was possible only in 1926. The Act came into force only from 1st June 1927.

Amendments to the Act

The Indian Trade Union Act, 1926, was amended in 1929 providing for appeal against the decision of the Registrar, refusing to register a Trade Union of withdrawing the Registration. The other important amendment to the Act are as follows:

In 1947, the Act was amended for providing compulsory recognition of the Trade Unions by the employers. Any dispute regarding recognition was to be decided by the Labour Court set up under the Act. However these provisions relating to compulsory recognition have not been put into operation and remained a dead letter so far.

The Indian Trade Union (Amendment) Act, 1960, made some changes in sections 2 (t), 3,4,6,14,16 and 28 of the Act. By the Amendment Act of 1964, the word 'Indian' has been deleted from the Act and called as Trade Unions Act, 1926.

Object and Scope of the Act

The Supreme Court in Swadeshi Industries Ltd., Vs. Its workman (AIR 1960 SC 1258) explained the object of a trade union in the following words, "Trade unions are essential for safeguarding the rights of labour when there is a struggle between the labour and management and the interest of the two are in conflict, the Trade Unions are required to sort it out. The primary object of a Trade unions is securing improvements on matters like basic pay dearness allowance, bonus, gratuity, leave and holidays to its members" .

Art. 19(1)(a) and (c) of the Constitution of India guarantees to every citizen freedom of speech and expression and right to form associations and unions to ventilate their grievances. Any group of persons whether workers or employers can write themselves to protect their interest. Usually the term Trade Union refers to association of workers formed to protect their economic interest. But the Trade Unions Act 1926 is very wide in scope and covers the Trade Union of employed as well.

The Preamble of the Trade Unions Act says, it is an Act to provide for the Registration of Trade Union and in certain respects of define the law relating to registered Trade Unions. The Act lays down a detailed procedure for the registration and working of Trade Unions. In order that the union may fight for its legislatimate rights fearlessly, certain immunities from criminal and civil actions are granted to the members of a registered Trade Union and their officials. Thus provisions have been made to ensure a healthy union movement in India.

Definitions - Section - 2

Now let us see some of the important definitions provided in the Act.

Appropriate Government: In relation to a Trade Union Whose objects are not confined to one state. The' Appropriate Government' is the Central Government. In relations to all other Trade Unions, the State Government is the Appropriate Government'

Executive: Executive means the body to which the management of the affairs of a trade union is entrusted.

Office bearer: Office bearer's includes any members of the executive of the Trade Union. But an auditor is not deemed to be an office bearer of the Trade Union.

Registrar: Registrar means - (a) a Registrar of Trade Union appointed by the appropriate Government under Sec. 3. Registrar also includes an Additional or Deputy registrar of Trade Unions and,

(b) in relation to any Trade Unions, the Registrar appointed, for that State in which the head or registered office of the Trade union is situated.

Trade Dispute

The expression Trade Dispute means any dispute

(a) between employer and workmen, or

(b) between workmen and workmen, or

(c) between employers and employers.

Any such dispute must be connected with the employment or non-employment or the terms of employment; or the conditions of labour of any person.

The definition of Trade dispute in this Act is almost identical with the definition of Industrial disputes Act. Trade union: Sec. 2 (L) defines Trade union as any combination whether, temporary or permanent, formed (1) Primarily for the purpose of regulating the relation between workmen and workmen or between employers and employers, or (2) for imposing restrictive conditions on the conduct of any trade or business.

A trade union is a continuous association of wage earners for the purpose of maintaining the condition of the lives. The words combination used in Sec. 2 (L) carries a very wide meaning. Whatever may be the, if it is for one or the other statutory object, it is Trade union. In Tamilnadu N.G.O. union, Vs. Registrar, Trade Union (1962), The Tamil Nadu NGO Union included among its members sub-magistrates of the judiciary, Thasildars' officers in charge of Treasuries and Sub-Treasuries, officers of civil court establishment, and the Home Department of Government. The court, held that their union could not be recognized as a Trade Union for these persons were civil servants engaged in the task of the sovereign function of the Government.

Registration of Trade Union

Appointment of Registrars: (Sec. 3)

The appropriate government i.e. State Government appoints a person to the Registrar of Trade Union for the State. It may also appoints as many Additional and Deputy Registrars of Trade Unions as it thinks fit for the purpose of exercising and discharging the powers and functions of the Registrar. The State Government also defines the local limits within which they shall exercise and discharge the powers and functions so specified. If any such Additional or Deputy Registrar is appointed and exercises and discharges the powers and functions if a Registrar in an area, he stall be deemed to be Registrar for the purposes of this Act.

Mode of Registration: (Sec.4)

Any seven or more members of a Trade Union may be subscribing their names, apply for registrations of trade Union. After the date of application, but before the application, if more than half of the members who applied for registration, cease to be

members or disassociate themselves from the application by giving a notice in writing to the Registrar -in such a case the applications shall be deemed to have become invalid. Whereas only half or less than half of the members cease to the members of the union or disassociate themselves from the application, the application for registration shall be valid.

Application for Registration: (Sec.5)

(1) Application should be sent to Registrar in which 7 or more of such union must subscribe their names. The application must be accompanied by a copy of its, rules and a statement containing the following particulars.

a) the names, occupation and address of members making the application.

b) the name of the Trade Union and the address of its head office.

c) the titles, names, ages, addresses and occupations of the office bearers of the Trade Union.

Where a Trade Union has been in existence for more than one year, a general statement of the assets and liabilities of the Trade Union has to be delivered to the Registrar along with the application for registration.

Rules of Trade Union: (Sec.6)

Every registered Trade Union is required to have written rules, which shall determine and govern the relationship between the Trade Union and its members. They also provide guidance for the administration of the Trade Union.

A Trade Union is entitled to registration

1) if its executive is constituted.in accordance with the provisions of the Act, and

2) its rules provide the following matters, namely

(a) the name of the Trade Union

(b) the whole of its objects

(c) the purpose for which the general funds of the Trade Union shall be applicable

(d) the maintenance of a list of members and adequate facilities for the inspection there of by office bearers and members of the Trade Union

(e) admission of ordinary members - the person to be admitted must be an employee in the industry with which the Trade Union is connected. The rule shall also provide for Admission of the number of honorary or temporary office bearers to form the executive of the Trade Union.

(f) payment of subscription - it shall not be less then 25 paise per month per month per member.

(g) conditions under which any members shall be entitled to any benefit assure by the rules and under which any fine may be imposed on the members.

(h) the manner in which the rules shall be amended, varied or rescinded.

(i) the manner in which the members of the executive and other bearer of the Trade Union shall be appointed and removed.

(j) safe custody of funds, annual audit of accounts, adequate facilities for the inspection of account books by the office bearer and members of the Trade Union, and

(k) the manner in which the Trade Union may be dissolved

The Registrar may also ask for further information which he thinks necessary for the purpose of satisfying himself that the application complies with the provisions of the Act. He may refuse to register the Trade Union until such information is supplied. If the name under which a Trade Union or resembles such name as to be likely to deceive the public or the member of either Trade Union, the Registrar may direct the persons applying for the registration to change the name and it shall be registered only after such alteration.

Registration

The Registrar on being satisfied that the Trade Union has complied with all the requirements of this Act shall register the Trade Union by making necessary entries in the register. On registering a Trade Union, the registrar shall issue a certificate of registration in the prescribed form (Sec.8)

All communications and notices to a registered Trade Union may be addressed to its registered office (Sec. 12). Notice of any change in the address of the head office shall be given within fourteen/days of such change to the Registrar.

Cancellation of registration (Sec. 10) - The Registrar may withdraw or cancel the certificate of registration on the following grounds

(a) if the certificate has been obtained by fraud or mistake,

(b) if the Trade Union has ceased to exist,

(c) The Trade Union has wilfully contravened any provisions of the Act,

(d) the Trade Union has allowed any rule to continue in force which is inconsistent with any provisions of the Act,

(e) Trade Union has rescinded any rule which ought to be there,

(f) Trade Union has on its own, applied for withdrawal of cancellation.

Before the Certificate is withdrawn or canceled the Registrar shall give atleast two months notice in writing specifying the ground on which it is proposed to take

action. In the absence of previous notice any proceeding for cancellation or withdrawal of registration is illegal-(Radheysham Singh Vs. Batat Majdoor Union). How ever, no notice is required when application has been made by the Trade Union itself.

Appeal: (Sec.11)

If the registration of a Trade Union is refused or if a certificate of registration is withdrawn or cancelled, any person aggrieved or the Trade Union may appeal to the court, not inferior to the court of Principal, District Judge in the civil court of original jurisdiction as the appropriate Government may appoint in this behalf for that area.

A trade union after registration, 1) becomes a body Corporate and becomes a legal entity distinct from the members of which it is composed. (2) It has perpetual succession and a common seal. (3) It has the power to acquire and hold both movable and immovable properties. (4) It has the power to contract, and (5) it can use and be used.

Rights and Liabilities of Registered Trade Unions

1. A registered Trade Union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made for the promotion of the civil and political interests of its members (Sec. 16)

2. It becomes a body corporate (Sec. 13).

3. An office-bearer or member of a registered Trade Union hall not be liable to punishment under Sec. 120-B (2) of the Indian Penal Code, in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union For example a registered Trade Union has a right to declare strike and can persuade their to members to abstain from their work (Sec. 17).

4. Immunity from civil suits: Sec. 18 provides immunity to the members and office bearers of a registered Trade Union from civil proceedings. Normally a person is liable in start for bringing about disruption of employment between the employer and the employee. A Trade Union, or any office bearer or member is protected from civil litigation, even if they induced a worker to break off the contract of employment or for interfering with the trade, business or employment of some person provided the inducement is in contemplation or furtherance of a trade dispute. As a result no suit or other legal proceeding is maintainable in any civil court against a trade union or any office bearer or members of the union. However the immunity will not cover acts of threat, violence or illegal means employed by the union, its members and office bearers.

In Rohtas Industries staff Union Vs. State of Bihar (AIR 1963 Pat, 170), the question was whether employer can claim damages against the employees participating in an illegal strike and thereby causing loss to the employer. It was held that the purpose

of the Act is to benefit the community and not to benefit the employees by commencing an illegal strike the employer has no right of civil action against the employees apart from the penalty provided by the Industrial disputes Act against such strikes.

5. Enforceability of agreements: (Sec. 19) under the Indian Contract Act, 1872, an agreement in restraint of trade is void as against public policy. But under the Trade Union Act any agreement between the members of a registered Trade -Union shall not be void or voidable merely because any of the object of the agreement one in restraint of trade.

6. Right to inspect of books of Trade Union: (Sec.20). An office bearer or member of the Trade Union at such time as provided in the rules, may inspect the account books of a registered Trade Union and the list of members. The object of conferring this right on office bearers and members is that they satisfy themselves as to the genuineness of members and of the accounts of the union.

Membership : (Sec.21)

Any person who has attained the age of fifteen years may be a member of a registered Trade union and enjoy all the rights of a member. However, he cannot become an office-bearer till he completes the age of 18 years. Sec.21-A of the Act lays down that a person cannot be chosen as an office-bearer of a registered Trade Union if he has not attained the age of 18 year or if he has been convicted and sentenced to imprisonment by a court in India for an offence involving moral turpitude unless a period of five years has elapsed since his release from jail. Sec. 22 of the Act emphasises that not less than one-half of the total number of office bearers of every registered Union shall be persons actually engaged or employed with which the Trade Union is connected.

However the Government is empowered to exempt any Trade Union or class or Trade Union from the operation of the Section.

Change of Name : (See - 23, 25, and 26)

A trade union may change its name with the consent of not less than two-thirds of the total number of its members, by giving a notice in writing signed by the secretary and by seven members of the of the Trade Union. The change in name does not affect rights or obligations of the Trade Union or render defective and legal proceeding by or against the trade Union.

Objects on which general funds may be spent: (Sec. 15)

The general funds of a registered Trade Union shall not be spent on any other objects than the following namely:

(a) the payment of salaries, allowances and expenses to office bearers of the Trade Union

(b) the payment of expenses for the administration of the Trade ion including audit of the accounts of the general funds of the Trade Union;

(c) the prosecution of defence of any legal proceeding to which the Trade Union or any member there of is party.

(d) the conduct of the trade disputes on behalf of the Trade Union or any member there of.

(e) the compensation payable to members for loss arising out of trade disputes.

(f) allowances to members of their dependents on account of death old age sickness, accident or unemployment.

(g) the issue of or the undertaking of liability under policies of assurance on the lives of members.

(h) the provision of educational, social, or religious benefits for members or for the dependents of members

(i) the upkeep of a periodical published mainly for the purpose of discussing questions affecting employees or workmen as such.

(j) the payment of contributions to any cause intended to benefits workmen in general provided such, contributions in any financial year shall not exceed one-fourth of the total income, and,

(k) subject to any conditions contained in the notification, any other object notified by the appropriate government in the official Gazette.

Amalgamation of Trade Unions: (See 24 to 26)

Two or more Trade unions may be amalgamated to form one Trade union with or without dissolution or division of funds of the Trade Unions- In support of amalgamation one-half of the members of each or every Trade Union entitled to vote shall be recorded. Out of that at least 60% of the recorded votes must support the proposal for amalgamation. Notice of amalgamation signed by the secretary and by seven members of each of the Union shall be sent to the Registrar. If the Registrar is satisfied that all necessary formalities have been complied with he may register the Trade Union and the amalgamation shall have effect from the date of such registration. An amalgamation of two or more registered Trade Unions shall not prejudice any right of any such Trade Union or any right of a creditor or any of them.

Dissolution of Trade Union: (Sec. 27)

A Trade Union shall be dissolved by a notice of dissolution signed by seven members and the Secretary of the Union within 14 days of such dissolution. It shal be sent to the

Registrar of Trade Unions who shall register the same. Dissolution will take effect only from the date of such registration. In the absence of any rules providing for distribution of funds of the Trade Union the Registrar shall divide the funds amongst the members of the union.

(B) THE INDUSTRIAL EMPLOYMENT ACT (1946)

Before passing of the Industrial Employment Act, 1976, the conditions of employments there governed by contracts either express or implied between the employers and then employees indifferent industrial undertaking. In many cases, there conditions were not will defined and suffered from doubt and ambiguity. With the result there were frequent function between the management and workers in industrial undertakings. In the Tripartite labour conferences, the importance of making a law defining precisely the condition of employment was emphasised. With the view to achieve the object Industrial Employment Act 1946 was enacted by the central government.

The object of the Act is to require employers in industrial establishments to define the conditions of employment of worker in industrial establishments and to make the said condition known to workman employed by them. The other object is to regulate the conditions of recruitment discharge, disciplinarian action, holidays etc. of the workers employed in industrial undertakings employed in industrial undertakings.

Once the object becomes applicable to an industrial establishment if does not cease to apply on account of fall in the number of workmen in that establishment below 100.

Definitions

Appellate Authority:

It means an authority appointed by the appropriate government by notification in the official Gazette to exercise in such area as may he specified in the notification, the function of an appellate authority under this Act.

Appropriate Government:

Section 2(b) it means in respect of industrial establishment under the control of the central government or a Railway administration or in a major post, mine or oil field, the central government. In all other cases; it means The State government.

Certifying Officer

[Sec.2(c)] It means a Labour Commissioner, or a Regional Labour commissioner, and includes any other Officer appointed by the appropriate Government, by notification in a official Gazette, perform all or any of the function of a certifying officer under this Act.

Employer

Sec. 2(d) : It means the owner of an industrial establishment to which this Act for the time being applies.

Standing orders

Sec. 2(g) : The expression 'Standing Orders' means rules relating to matters set out in the Schedule of this Act.

Matters to be provided

1. Classification of workmen - e.g. permanent, temporary, apprentice etc.
2. Period and hours of work, holidays, pay days, and wage rates.
3. Shift working.
4. Attendance and late coming
5. Conditions of, procedure in applying for and the authority which may grant leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and reopening of sections of the industrial establishments.
8. Termination of employment and the notice there of to be gives by employer and workmen.
9. Suspension or dismissal for misconduct and acts or omissions which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrong full exactions by the employer or his agents or servant.
11. Any other matter which may be prescribed.

Submission of draft standing orders (Sec. 3)

Within six months of the application of the Act to an industrial establishment, the employer shall submit to the certifying officer, five copies of the draft standing order proposed by him for adoption in his industrial establishment. Such draft standing orders shall cover every matter set out in the schedule to the Act. The draft shall be accompanied by a statement giving prescribed particulars of the workmen, employed in industrial establishment. The name of the Trade union if any which workmen belong should also be sent along with the Draft standing order.

Certification of standing orders (Sec. 5)

When the draft standing order is submitted to the certifying officer he shall forward

a copy of it to the Trade Union, or where there is no trade union to the workmen, along with a notice in the prescribed form requiring objection, if any, which the Trade union or workmen may desire to make to the draft standing orders. The workman or the Trade union is required to submit the objective to the certifying officer within fifteen days from the receipt of the notice. The certifying officer shall give the employer, Trade union or the representative of workmen opportunity of being heard. He shall there after decide whether any addition or modification is necessary to the draft order. The certifying officer shall after making modification, in any, certify the draft. He shall send the certified copies within seven days to the employer, Trade Union or the representative of the workmen.

The purpose of framing the standing orders and getting them Certified by the Certifying officer is that conditions of service of that employment shall be regulated by it. When certified, the standing orders will be binding on the employees, who are at time in service of the employer.

Appeals: Any employer, Workman, Trade Union or representative of the workmen aggrieved by the order of the certifying officer may, within 30 days from the date on which copies of the Draft Standing orders are sent, appeal to the appellate authority. The decision of the appellate authority is final. The appellate authority shall by order in writing confirm the standing orders either in the form certified by the certifying officer or after amending Standing orders by making such modifications as it thinks necessary to render the standing orders Certifiable under this Act.

The appellate authority shall within seven days of its order send copies of the Draft standing order to the certifying officer, employer, Trade Union or other prescribed representatives of the workmen. In case the appellate authority makes any modification in the Draft standing order, it shall send a copy of the amended standing order along with its order (Sec.6).

Date of operation of standing orders (Sec. 7)

The standing orders certified by the certifying officer shall unless an appeal is preferred, come into operation on the expiry of thirty days from the date on which authenticated copies are sent. Where an appeal is preferred, it shall come into operation on the expiry of seven days from the date on which copies of the order of the appellate authority are sent.

Register of Standing Order (Sec. 8)

A copy of all standing orders as finally certified under this Act shall be field by the certifying officer in a register in the prescribed form maintained for the purpose. A copy of the certified standing orders shall be furnished to any person applying for it on the payment of the prescribed fee.

(C) THE INDUSTRIAL DISPUTES ACT, 1947

Scope and object

The Industrial Disputes Act, 1947 extends to the whole of India. It came into operation on the first day of April, 1947.

The object of the industrial relations legislation in general is industrial peace and economic justice. The prosperity of any industry depends upon its growing production. The production is only possible when the industry functions smoothly without any interruptions. Therefore, the object of the Act as laid down in preamble is to make provision for the investigation and settlement of industries disputes.

The principal objects of the Act as analysed by the Supreme Court in Workmen of Dimakuchi Tea Estate Vs. Management of Dimakuchi Tea Estate, (AIR 1958 S.C.. 353), are as follows:

1. The promotion of measures for securing amity and good relations between the employer and workmen.
2. An investigation and settlement of industrial disputes.
3. The prevention of illegal strike and lockouts.
4. Relief to workmen in the matter of lay-off retrenchment and closure of an undertaking.
5. Collective bargaining.

Definitions (Sec. 2)

Now let us see some of the important definitions provided under the Act.

Appropriate Government Sec. 2(a)

The appropriate government is the central government in relation to any industrial dispute concerning (1) any industry carried on by or under the authority of the central Government or by a railway company or concerning any such controlled industry as may be specified by the Central Government. (2) the Industrial Finance Corporation of India or the Employees' State Insurance Corporation, the Indian Airlines and Air - India Corporations, or the Life Insurance Corporation, or the Agricultural Refinance Corporation, or the Deposit Insurance established-for, two or more contiguous 'states under Sec - 16 of the Food Corporation Act, 1964, or Regional Rural Bank, or the Banking service Commission, or a banking or an insurance Company, a mine, an oil, field, a Cantonment Board or a major port.

In relation to any other industrial dispute, the 'appropriate Government' means the State Government.

Average Pay. [Sec.2 (aaa)] - It means the average of the workman in the case of

(1) monthly paid workman - in the three complete calendar months.

(2) Weekly paid workman - in the four complete weeks, and

(3) daily paid workman, - in the twelve full working days.

Where the calculation of the average pay is not possible because the workman has not put in the required service, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked.

Award - See 2 (b): It means an interim of final determination of any industrial dispute or of any question relating there to by any Labour Court, Industrial Tribunal of National Tribunal. It also includes an arbitration award made under See 10 - A.

Closure - See 2(cc) - Closure means the permanent closing down of a place of employment or part thereof.

Controlled Industry - See 2 (ee) - It means any industry the control of which by the union has been declared by any central Act to be expedient in the public interest. Therefore, a controlled industry implies an industry which is controlled by the union i.e., the central Government.

Employer: See 2 (g) - Employer in relation to an industry carried on by or under the authority of any department of the central Government or a state Government means the authority prescribed in this behalf. Where no authority is prescribed, the employer means the head of the department carrying means the chief executive officer of that authority. But the definition of is neither exhaustive nor inclusive. It extends to all industrial undertakings and not merely to those run by Government or local authorities.

Industry - Sec. 2(j)

A seven judge Bench of the Supreme court gave a wide amplitude to the meaning of the term 'industry' in the case Bangalore Water Supply Vs.. Rajappa, (A.I.R 1978 S.C.. 548) so as to bring within its scope clubs, educational and research institutions ranging from the Bangalore water supply and Sewerage Board to the Gandhi Ashram were such as to come .within the scope of the teen 'industry' as defined in ... of the Industrial Disputes Act, 1947.

The Supreme Court overruled the decisions given in the cases relating to the Safdarjang Hospital, Gymkhana club, Delhi University and Dhanrajgiri Hospital. The following important principles were laid down by the supreme court in the Bangalore water supply case.

(1) Where there is (a) systematize activity (b) organised by co-operation between

employer and employee (c) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, prima facie, there is an industry' in that enterprise.

However, industry does not include spiritual or religious services or services geared to celestial bliss, e.g. making on a large scale prasad or food. It includes material services and things.

(2) Absence of profit motive or gainful objective is irrelevant, be the venture in the public joint, private or other sector.

(3) The true focus is functional and the decisive test is the nature of activity with special emphasis on the employer - employee relations. If the organisation is a trade or business it does not cease to be one because of philanthropy nature.

Therefore any systematic activity organised or arranged in a manner in which trade or business was generally organised or arranged would be an industry even if it proceeded from charitable motives. It was the nature of the activity that had to be considered and it was upon the application of that test that even the state inalienable functions fell with in the definition of 'industry'. Thus the Octroi department of a Municipal Council was help to be industry - Abdul Wahab lal Bhai Vs. G.E. Patankar (1980).

The definition of the term 'industry' has been amended in 1982, to a great extent incorporating the views of the Supreme Court expressed in Bangalore water supply Vs. A. Rajappa (AIR 1978) The Industrial Disputes (Amendment) Act, 1982 - enacts altogether a new definition of industry. This amended definition nullifies the effect of many judicial decisions.

Now 'industry' means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contract) for the production, supply, or distribution of goods or services with a view, to satisfy human wants or wishes whether or not,

(i) any caoital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes

a) any activity of the Dock Labour Board established under the Dock workers (Regulation of Employment) Act, 1948.

b) any activity relating to the promotion of sales or business or both carried on by an establishment, but does not include

1) any agricultural operation except where such 'agricultural operation is carried on an integrated manner with any other activity and such other activity is the predominant one.

However, for the purpose of this cub clause,

1) agricultural operation does not include any activity carried on in plantation as defined in the Plantation Labour Act, 1951, or

2) hospitals or dispensaries; or

3) educational, scientific, research or training institutions, or

4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service, or

5) Khadi or village industries or,

6) any activity of the Government relatable to the sovereign functions of the Government including all the activities dealing with defence research, atomic energy and space, or;

7) any domestic service; or

8) any activity, being a profession practiced by individual or body of individuals, if the number of persons employed by the individual or body of individuals in such profession is less than ten; or

9) any activity, being an activity carried on by a Co-operative society or a club or any other body of individuals, if the number of persons employed by such society or club or body of individuals in relation to such activity is less than ten.

Industrial Dispute - Sec. 2(k) : It means

(1) a dispute or difference between

(a) employers and employers or

(b) employers and work men, or (c) workmen and work man.

(2) such dispute or difference is connected with

(a) the employment or non-employment,

(b) the 'terms of employment or (c) the conditions of labour of any person. Generally an industrial dispute is implied to mean a dispute between the workmen and the management.

Individual dispute and industrial dispute :- whether a single workmen who is aggrieved by an action of the employer can raise industrial dispute. Sec.2(k) speaks of a dispute between employer and Workmen. Before insertion of Sec.2-A, an individual dispute could not purse be an industrial dispute, but it could become one of taken up by the Trade Union or a number of workman. Now Sec. 2-A, provides that where any employer discharges, dismisses, retrenches or otherwise terminates the services, of an individual workman, any dispute or difference between that workman and his employer

connected with, or arising out of such discharge, dismissal retrenchment or termination shall be deemed to be an industrial dispute even if not their workman nor any union of workmen is a party to the dispute.

Sec.2A is of limited application. It does not declare all individual disputes to be an industrial dispute. A dispute connected with a discharges, dismissed retrenched, or terminated workman shall be an industrial dispute.

In Workmen of Indian Express Newspapers Ltd. V Management of Indian Express Newspapers (AIR 1970 S.C. 737). a dispute relation .to two workmen of Indian Express Newspapers Ltd. was raised by the Delhi union of journalists which was an outside union. About 25 percent of the working journalists of the Indian Express were members of that union. But there was no union of the journalists of the Indian Express. It was held that the Delhi union of journalists could represent the working journalists employed in Indian Express and the dispute was thus transformed into an industrial dispute.

Lay-off [Sec. 2 (kkk)]

Lay-off means the failure, refusal or inability of an employer to give employment to a workman whose name is borne on the master rolls of his industrial establishment and who has not been retrenched.

The failure, refusal or inability of an employers to give employment to a workman whose name is borne on the master rolls of his industrial establishment and who has not been retrenched.

The failure, refusal or inability to give employment to a workman may be on account of

(i) Shortage of coal, power or raw materials, or

(ii) The accumulation of stocks, or

(iii) The break down of machinery, or (iv) natural calamity; or (v) for any other reasons

A workman shall be deemed to have been laid-off for any days if he presents himself for work at the establishment at the appointed time and is not given employment by the employer within two hour of his so presenting himself. But if the workman, is asked to be present during the second half of the shift for the day and is given employment then he shall be deemed to have been laid off for one half of the day. If he is not given employment even in the second half of the shift there shall be deemed to have been laid off for the whole day land entitled to full basic wages and dearness allowance for the whole day.

Lock out-Sec. 2(1)

Lock out means the closing of a place to employment, or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him.

Strike is a weapon in the hands of the labour to force the management to accept their demands. Similarly, lock out is a weapon in the hands of the management to course the labour to come down in their demands relating to the conditions of employment.

Difference between lock out and layoff

1. Lock out is resorted to by the employer to coerce or pressurise the workmen to accept his demands, layoff is for trade reason beyond the control of the employer.

2. Under lock out the employer refuses to give employment because of closing of a place of employment or suspension of work

Under layoff, the employer refuses to give employment because of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for and other reason to give employment.

(3) Lock out is due to an industrial dispute and continues during the period of dispute; lay off is not connected, with a dispute.

Difference between lock out and closure

1) Lock out is temporary, closure is permanent.

2) Lock-out is a weapon of coercion in the hands of employer, closure is generally for trade reasons.

3) Lock-out is during an industrial dispute; while in the case of closure there need not be any dispute.

4) In closure there is severance of employment relationship, where as in lock-out there is no severance but only suspension of such relationship.

Difference between lock out and retrenchment

1. Lock out is temporary - retrenchment is permanent.

2. Lock out is with a motive to coerce the workmen-where as the intention of retrenchment is to dispense with surplus labour.

3. Lock out is due to and during an Industrial dispute; where as in case of retrenchment there is no dispute.

4. In Lock-out the relationship of employer and employee is only suspended, where as in retrenchment such a relationship is severed at the instance of the employer.

Public Utility Service :- Sec 2(a)

Public Utility Service means

(i) any railway service

(ii) any transport service for the carriage of passengers or goods by air

(iii) any service in or in connection with the working of any major port or dock

(iv) any section of an industrial establishment on the working of which the safety of the establishment or the workmen employed there in depends.

(v) any postal, telegraph or telephone service;

(vi) any industry which supplies power, light or water to the public;

(vii) any system of public conservancy or sanitation;

(viii) any industry specified in the first schedule such as cement, Banking, coal, Iron and steel. Government Mints, security press etc.

The appropriate Government may, if satisfied that public emergency or interest so requires, by notification in the official Gazette, declare any industry specified in the first schedule to be a public utility service for the purpose of the Industrial Disputes Act for such period as may be specified in the notification.

The period so specified shall not in the first instance exceed six months. But it may be extended from time to time by any period not exceeding six months at any time by similar a notification.

Retrenchment :- Sec. 2(oo)

It means the discharge of surplus about or staff by the employer for any reason what so ever. The action says retrenchment means the termination by the employer of the service of a workman for any reason what so ever, otherwise than as a punishment inflicted byway of disciplinary action.

However retrenchment does not include (a) voluntary retirement of a workman, or (b) retirement of a workman on reaching the age of superannuation if the contract of employment between the employer and the workman contains a stipulation in that behalf, or (c) termination of the service of a workman on the ground of continued ill-health.

In Santosh Gupta Vs. *State Bank* of India (AIR 1980 S.C. 687), an employee of the bank was discharged on the ground that she failed to pass the prescribed test proved for confirmation in service. She had but in more than 240 days service in a year. The supreme court directing her reinstatement with full back wages held that such termination of service would amount to entrenchment.

In M/s Gammon India Ltd. Vs. *Sri Niranjan Dass* (1984 ILLJ. 233), the services of senior clerk were terminated due to reduction in the volume of business of the company as a result of rescission in work. It was held to be case of retrenchment because the termination does not fall in any of the three excluded categories.

Strike: *Sec. 2*(q)

Strike means: (1) a cessation of work by a body of persons employed in any industry acting in combination; or

(2) a concerted refusal of any number of persons who are or have been employed in any industry to continue to work or to accept employment or

(3) a refusal under a common understanding of and number of person who are or have employed in industry to continue to work or accept employment.

Strike means the stoppage of work by a body of workmen acting in concert with a view to bring pressure upon the employer to concede to there demands during an industrial dispute. Cessation of work or refusal to work is an essential element of strike. Cessation of work even for half an hour amounts to a strike.

(Patiala Cement Co., Ltd. Vs. *Certain Workers).* Mere absence from works is not enough, but there must be concerted refusal to work, to constitute a strike. It is an expensive weapon and generally labours last resort in connection with industrial disputes.

Kinds of strike:

There are mainly three kinds of strike, namely

(i) general strike

(ii) stay in strike; and

(iii) go slow.

A general strike is one, where the workmen join together for common cause and stay away from work. Token strike is also a kind of general strike. It may be for a day or a few hours or for a short duration because its main object is to draw, the attention of the employer by demonstrating the solidarity and Co-operation of the employees. General Strike is for a longer period and resorted to when employees fail to achieve their object by other means.

A Stay-in-Strike is also known as tools - down strike or pen down Strike. In this form of strike workmen report to their duties but do not work. In Punjab National Bank Ltd. Vs. Their workmen (AIR 1960 S. C. 160), the Supreme Court held that if in pursuance of common understanding the employees entered the premises of the Bank and refused to take their pens in their hands would no doubt be a strike.

In a go-slow strike, the workmen do not stay away-from work, they work but with a slow speed in order to lower down the production and thereby cause loss to the employer. Strictly speaking, go-slow is not a strike within the meaning of the term in the Act, but is serious misconduct.

In addition to these forms which are frequently used by the industrial workers, a few more are also common, though some of them do not fall within the definition of strike. They are sympathetic strike. Hunger strike, work to rule.

Wages - Sec - 2(rr) - wages means all remuneration capable of being expressed

in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment.

Wage also includes - (i) such allowance including dearness allowance as the workman is for the time being entitled to.

(ii) the value of any house accommodation, or of supply of light water, medical attendance or other amenity or of any service of any concessional supply of food grains or other articles.

(iii) any travelling concession;

(iv) any commission payable on the promotion of sales or business or both.

But the following are not wages:

(a) any bonus.

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for benefit of the workman under any law for the time being in force.

(c) any gratuity payable on the termination of service of workman.

Workman : Sec. 2 (s) - workman means any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward. The terms of employment may be express or implied.

For the purposes of any proceeding under this Act in relation to an industrial dispute, 'workman' includes any person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute.

But workman does not include any such person

(i) who is subject to the Air Force Act. 1950, or the Army Act, 1950, or the Navy Act, 1957, or

(ii) who is employed in the police service or (iii) who is employed mainly in a managerial or administrative capacity or

(iv) who being employed in a supervisory capacity, draws wages exceeding Rs.1,600 per month or exercises, either by the nature of the duties attached to office or by reason of the powers vested in him, function mainly of a managerial nature.

Authorities under the Act

The main object of the Industrial Disputes Act is investigation and settlement of industrial disputes. The Act provides an elaborate and effective machinery for bringing about industrial peace by setting up the following authorities for the investigation and

settlement of industrial disputes. The various modes of settlement of disputes provided by the Act may be classified as: (1) Conciliation (2) Adjudication and (3) Arbitration.

The machineries that make use of conciliation as the method of settlement of disputes are the 1) works committee 2) conciliation officer and 3) Board of conciliation.

The adjudicating authorities that decide any dispute under the Act are - the Labour Court, Tribunals and National Tribunal. Sec. 10-A, makes provision for voluntary reference of disputes to arbitration. Regarding Court of Inquiry whose main function is inquiry into any matter appearing to be connected with or relevant to an industrial dispute.

Now let us discuss each one of the Authorities provided under the Act. (Sections 3 to 9)

1. Works Committee: (Sec.3)

In the case of an industrial establishment in which one hundred or more workmen are employed of have been employed on any day in the proceeding twelve months, the appropriate Government may by general or special order, require the employer to constitute a works committee. The Committee shall consist of representatives of employers and workmen engaged in the establishment. The number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their registered trade union.

The duties of the works committee are (a) To promote measures for securing and preserving amity and good relations between the employers and workmen. (b) To achieve the above it is their duty to comment upon matters of common interest or concern of employers and workmen, (c) To endeavour to compose any material difference of opinion in respect of such matters. These matter include welfare of workers, supervision of recreational facilities and creches and hospitals, their training, wages, hours of work, bonus, gratuity, holiday with pay, and working conditions including discipline, promotions, transfers etc.

The institution of the works committee has been provided under the Act in order to look after the welfare and interest of the workmen. They are normally concerned with the problems arising in the day-today working of the concern and functions of the works committee is to ascertain the grievances of the employee and endeavours to seek amicable settlement. (Kemp and Co., Ltd. Vs. Their workmen)

2. Conciliation Officers (Sec. 4)

The appropriate Government may be notification in the official Gazette, appoint such number of persons as it thinks fit to be conciliation officers.

The duty of the conciliation officers shall be to mediate in and promote the settlement of industrial disputes. A conciliation officer may be appointed for speciated area or for specified industries and either permanently or for a limited period. He shall be deemed to be a public servant within the meaning of Sec.21 of The Indian Penal Code, 1860.

3. Boards of Conciliation (Sec. 5)

The appropriate Government may, by notification in the official Gazette, constitute a Board of conciliation. The object of appointing the Board is promotion of settlement of an industrial dispute. A Board shall consist of a chairman and two or four other members, as the appropriate Government thinks fit. The chairman shall be an independent person. The other members shall be persons appointed in equal number to represent the parties to the dispute. Any person appointed to represent a party shall be appointed on the recommendation of that party. But if any party fails to make a recommendation with in the prescribed period, the appropriated Governments shall appoint such persons as it thinks fit to represent that party.

A Board having the prescribed quorum may act even though the chairman, or any of its members is absent or there is any vacancy in its number. But, if the appropriate Government notifies the Board that the services of chairman or of any other member have cased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed.

4. Courts of Inquiry (Sec. 6)

The appropriate Government may, by notification in the official Gazette, constitute a court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

A court may consist of one independent person or of such number of independent person as the appropriate Government may think fit. Where a court consists of two or more members, one of them shall be a appointed as the chairman.

5. Labour Courts (Sec. 7)

The appropriate Government may by notification in the official Gazette, constitute one or more labour courts for adjudication of industrial disputes relating to any matters specified in the Second schedule. The matters specified in the second schedule are,

1. The propriety or legality of an order passed by an employer under the standing orders.

2. The application and interpretation of standing orders.

3. Discharge or dismissal of workmen, including reinstatement or grant of relief to workmen wrongfully dismissed.

4. Withdrawal of any customary concession or privilege.

5. Illegality or otherwise of a strike or lock out.

The Labour courts shall also perform such other functions as may be assigned to them under this Act. A Labour court shall consist of one person only to be appointed by the appropriate Government. The qualification of a person who can be appointed as presiding officer of the Labour Court are

(a) He is, or has been a judge of a High court, or.

(b) He has been a District judge or an Additional district judge for a period not less then three years, or

(c) He has been held any judicial office not less than seven years, or

(d) He has been the presiding officer of a Labour Court for not less than five years.

6. Industrial Tribunals (Sec. 7.-A)

The Industrial Disputes Act empowers the appropriate Government to constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter to whether specified in the second schedule or in the third schedule. To mention some of the matters specified in the third schedule, wages, Hours of work and rest intervals, leave with wages and holidays, Bonus, Retrenchment of workmen and closure of establishment, etc.

The Tribunal shall consist of only one person to be appointed by the appropriate Government. For appointment as the presiding officer of the Tribunal the Act prescribes a similar qualification as that of the presiding officer of a Labour court.

National Tribunal (Sec. 7B)

The Central Government may, by notification in the official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes. And it can be constituted only for the adjudication of the Industrial disputes involving question of National importance or where industrial establishments are situated in more than one state and they are likely to be affected or interested in such disputes. A National Tribunal shall consist of one person only to be appointed by the central Government. A person shall not be qualified for appointment as the presiding officer of a National Tribunal unless he is or has been a Judge of a High Court. The central Government may, if it thinks fit appoint two persons as assessors to advise National Tribunal in the proceeding before it.

Grievance Settlement Authority

A new Section 9-C, has been added by the Industrial Disputes (Amendment.) Act, 1982. Setting up of Grievance Settlement Authorities.

The employer in relation to every industrial establishment in which fifty or more workmen are employed or have been employed on any day in the proceeding twelve months shall provide for a Grievance Settlement Authority for the settlement of industrial disputes connected with an individual workman employed in the establishment.

Where an industrial dispute connected with an individual workman arises in establishment, the workman or any trade union in which such workman is a member refer such dispute to the Grievance Settlement Authority.

The Grievance Settlement Authority shall follow such procedure and complete its proceedings within such period as may be prescribed. Any dispute referred to in this section shall not be referred to other Authorities, unless such dispute is referred to the Grievance settlement Authority and the decision is not acceptable to any of the parties tq the dispute.

Procedure, Powers and Duties of Authorities

***Procedure* - (Sec. 11}** - Subject to any rules that may be made in this behalf, at arbitrator, a Board of conciliation, a court of Inquiry, Labour court, an Industrial Tribunal shall follow such procedure as the arbitrator or others authority concerned may think fit. These provisions give very wide discretion to the authorities, and the discretion must be exercised with care and caution bearing in mind the principles of natural justice.

Powers of authorities (Sec. 11) A conciliation officer or a member of a Board of conciliation or court of Inquiry or the Presiding officer of a Labour Court, Industrial Tribunal or National Tribunal may for the purpose of inquiry into any, existing or apprehended industrial dispute, enter the premises authority must give reasonable notice of its intention to do so.

2. Every Board of conciliation, Court of Inquiry, Labour court, Industrial Tribunal and National Industrial Tribunal shall have the same powers as are vested upon a civil court, when trying a suit As a result they are competent to enforce the attendance of any person and examine him on oath, compel the production of documents and material objects and issuing commissions for the examination of witnesses.

3. Every inquiry or investigation by a Board of conciliation court of Inquiry. Labour court, Industrial Tribunal or National Tribunal shall be deemed to be judicial proceeding within the meaning of Sections 193 and 228 the Indian penal Code.

4. A conciliation officer may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or to be necessary for the purpose of verifying the implementation or any award.

5. A court of Inquiry, Labour Court, Industrial Tribunal or national Tribunal may, if it so thinks fit, appoint one or more persons have special knowledge of the matter under consideration as assessor or assessors to advise it in the proceeding before it.

6. All conciliation .fficers, members of a Board of conciliation or court of Inquiry and the presiding officers of a Labour court, Industrial Tribunal or National Tribunal shall deemed to be public servants with the meaning of Social of the Indian penal Code.

7. Every Labour court, Tribunal, or national Tribunal shall be deemed to be civil court for the purpose of section 345, 346 and 348 of the Code of Criminal Procedure.

8. The cost of any proceeding or the Cost incidental to any proceeding before a Labour Court. Tribunal or National Tribunal shall be in the discretion of authority before which the proceedings are going on. The authority concerned shall have full power to determine by whom and to whom costs are to be paid.

9. Where an industrial dispute relating the discharge of dismissal of a workman has been referred to a Labour court, Tribunal or National Tribunal for adjudication and the such authority is satisfied that the discharge or dismissal was not justified, it may by its award set aside the order of discharge or dismissal and direct reinstatement of the workman. Or else it is empowered to give such other relief to the workman including the award of the lesser punishment in discharge of dismissal as the circumstances may require.

Duties of Conciliation Officers

Sec. 12 speaks about the duties of conciliation officer for the purpose of bringing about a settlement of dispute.

1. The conciliation officer could investigate the dispute with out any delay. He may also do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

2. As soon as a settlement is arrived the conciliation officer should send a report to the appropriate Government. Alongwith the report the conciliation officer should send a memorandum of the settlement signed by the parties to the dispute.

3. If any such settlement is not arrived at, he should send a full report to the appropriate Government, explaining the steps taken by him for bringing about a settlement. In the report he shall state the reasons on account of which, a settlement could not be arrived at. Such report shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government.

4. The Government is authorised to examine the report and if it satisfied that there is a case for reference to a Board of conciliation, Labour Court, Industrial Tribunal or National Tribunal it may make a reference. Where the appropriate Government does not make such a reference, it shall record and communicate to the parties concerned its reason therefor.

Duties of Board of Conciliation

Sec. 13 of the Act lays down the duties board of conciliation a. If any dispute is referred to the Board, it is the duty of the Board to endeavour to bring about a settlement without any delay.

2. If a settlement is arrived at in the course of the conciliation proceedings, the Board shall send a report to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

3. If any such settlement is not arrived at the Board shall send a full report to the appropriate government setting forth the steps taken by the Board for bringing about a settlement. The report shall be accompanied with facts and circumstances, its finding there on the reasons on account of which, in its opinion, a settlement could not be arrived at the board shall also send its recommendations for the determination of the dispute.

4. On the receipt of the report, in respect of a dispute relating to a public utility service if the appropriate Government does not make a reference to a Labour court, Tribunal or National Tribunal it shall record and communicate the parties concerned its reason there for.

5. The Board shall submit its report within two months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government.

Duties of Courts - Sec. 14 of the Act deals with the duties of the court. The duties of a court of inquiry are, - when a reference is made by appropriate Government, regarding any matters relating to the Industrial dispute, to enquire into the matter and to submit airport within a period of six months from the commencement of he enquiry.

Duties of Labour Courts, Tribunals and National Tribunals

The duties of these bodies as laid down by Sec. 15 of the Act are:

(i) To hold adjudication proceedings expeditiously; and

(ii) To submit its award to the appropriate Government within the report specified in the order referring such industrial dispute. The Government can also extend the period, if it is necessary.

Award and Settlement

Award means an interim or final determinant on a any industrial dispute or any question relating there to by any Labour Court, Industrial Tribunal, or National Tribunal and includes an arbitration award made under Sec. 10-A [Sec. 2(b)].

The term 'settlement' is defined as under Sec.. 2(p) of the Act - as follows:

Settlement means a settlement arrived at the course of a conciliation proceeding. It includes a written agreement between the employer and workmen arrived at otherwise then course of conciliation proceeding where such agreement has been signed by the parties there to in such manner.as may be prescribed and a copy there of has been sent an officer authorised in this behalf by the appropriate Government and the conciliation officer.

Form of Report and award (Sec. 16)

The report of a. Board of conciliation of court of inquiry should be in writing, and they should be signed by all the members of Board or court.

The award of a Labour Court of Tribunal or National Tribunal should be in writing and it should be signed by its presiding officer.

Publication of reports and awards·(Sec. 17)

Every report of a Board or court and every award of a Labour Court, Tribunal or National Tribunal should be published in the official gazette within thirty days from the date of the receipt of report by the appropriate Government.

Commencement of award (Sec. 17-A)

An award becomes enforceable on the expiry of theory days from the date of its publication under Sec. 17. But the appropriate Government can declare in the official gazette that the awards shall not become enforceable on the expiry of thirty days from the date of its publication, if the Government is of opinion that the enforcement of such award would affect national economy or social justice. For the purpose of stopping the enforcement of any award a notification in the official Gazette is necessary.

Where a declaration stopping the enforcement of award has been made, the appropriate Government or the Central Government may make an order rejecting or modifying the award. Any such award may be modified or rejected within ninety days from the date of publication of the award under Section 17. Further, the award together with a copy of the order shall be laid before the Legislature of the state or before Parliament as the case may be.

Such award becomes enforceable after fifteen days from the date on which it is so laid before the legislature or Parliament.

Payment of full wages to workmen pending proceedings. (Sec. 17B). This section was inserted by the Industrial Disputes (Amendment). Act 1982. The Labour Court of Tribunal or National Tribunal may pass an award directing reinstatement in any workmen. Against such award the employee may prefer any proceedings; in a High court or Supreme Court. Sec. 17-B provides that during the period of tendency of such proceeding the employer is liable to pay such workman full wages inclusive of any maintenance and allowance. Thus, the amended section protects the interest of workmen.

Persons on whom settlement and awards building (Sec. 18)

Settlement : Any settlement arrived at by an agreement between the employee and workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Such agreement must be signed by the parties and a copy of it must be sent to the appropriate Government.

A settlement arrived at in the course of conciliation proceedings or on arbitration award or an award of a Labour Court. Tribunal or national Tribunal which has become enforceable is binding on the following persons:

(a) All parties to the industrial dispute;

(b) All other parties summoned to appear in the proceeding as parties to the dispute;

(c) Where a party referred to is an employer, his he is successors or assigns in respect of the establishment to which the dispute relates.

(d) Where a party referred to is composed of workmen all persons who were employed in the establishment.

In Herberstons Ltd. Vs. Workmen (AIR 1977 SC.322) the Supreme Court held that when recognised union negotiates with an employer the worker as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interest of labour, enters into a settlement in the best interest of labour.

Period of operation of settlement and awards: (Sec. 19)

Settlement : settlement arrived at in the course of conciliation proceeding before a Board of conciliation shall come into operation (a) on such date is agreed upon by the parties to the dispute and (b) if not date is greed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute. Sec.19(1).

Such settlement shall be binding for such period as agreed by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties. It shall continue to be binding until a party gives notice in writing to terminate the settlement. The settlement shall cease to be binding on the expiry of two-months from such notice of termination.

Award : An award shall remain in operation for a period of one year from the date on which the award becomes enforceable. But the appropriate Government may reduce the said period and fix such period as it thinks fit. The appropriate Government may also extend the period of operation by any period not exceeding one year at a time. But the total period of any award shall not exceed three years from the date on which it came into operation.

The award shall continue to be binding on the parties after the expiry of the period operation till a part bound by the award gives notice to the other party or parties intimating intention to terminate the contract. The award shall cease to be binding on the expiry of to months from notice. The notice shall not have any effect unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be.

Notice of Change

Sec.9-A of the Act prevents the employer from making any change in the conditions service of any workman in respect of the matters specified in the Fourth Schedule. Before making any change in the conditions of service a Notice is to be given some of the matte that are enumerated in the Schedule are :

(]) Wages, including the period and mode of payment;

(2) Compensatory and other allowances;

(3) Hours of work and rest intervals;

(4) Leave with wages and holidays

(5) Classification by grades;

(6) Introduction of new rule of discipline, or alternation of existing rules, except in so a they are provided in standing orders etc.

The employer should give notice to the workmen likely to be affected by such change The notice must be given in the prescribed manner and must state the changes proposed to be effected. After giving such notice, the employer must wait for twenty one days. Any change is effected before the expiry of the said period of twenty one days shall be invalid;

However no notice is necessary, where the change is effected in pursuance of am settlement or award.

The object and purpose of Sec. 9-A is to afford an opportunity to the workmen to consider the effect of a propped change and it necessary to present their view on proposal. For example, changing the weekly holiday from Sunday to some other day of rest would fall within the Fourth Schedule. Therefore, the effecting any change in weekly rest day a notice under Section 9-A would be necessary and any change without such notice would be ineffective.

In the workmen of the Food Corporation of India Vs. M/s. Food Corporation of India (1985 11 LLJ) the corporation introduced the systems of direct payment of wages in 1973 but was discontinued in February 1975. The system of payment of wages through contractor was introduced. No notice was issued to the workers under Sec.9-A of the

Act. It was held that if the employer wanted to introduce a change in respect any of the matters set out in Fourth Schedule it was obligatory to give a notice of change. By cancelling the direct payment and introducing the contractor, both the wages and the mode of payment was altered to the disadvantages of the workmen, A notice of change was, therefore a must before introducing the change otherwise it would be an illegal change. Any such illegal change invites a penalty under Sec.. 31(2) of the Industrial Disputes Act.

Reference of Disputes to Boards Courts (or Tribunals)

Sec. 9-B of the Act confers powers on the appropriate Government to exempt by notification in the gazette certain class of industrial establishments or class of workmen employed in any industrial establishments from the application of the provisions of Sec. 9A of the Act.

Section 10 provides that where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time.

(a) Refer the dispute to a Board promoting a settlement thereof or;

(b) Refer any matter appearing to be connected with or relevant to the dispute to a court for Inquiry, or

(c) Refer the dispute or any mater appearing to be connected with or relevant to the dispute, if it relates to any matter specified in the Second Schedule to a Labour Court for an judicationis; or

(d) Refer the dispute or any matter appearing to connected with or relevant to the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication. The reference should be by an order in writing.

Where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may if it so thinks fit, make the reference to a Labour Court.

Where the dispute relates to a public utility service and a notice under Sec. 22 has been given the appropriate Government shall make a reference under Sec. 10(1) not with standing that any other proceeding under this Act in respect of the dispute may have commenced. However, if the Government considers that notice has been given 'frivolously or vexatiously or that it would be inexpedient so to do, it may not make a reference under Sec. 10(1).

Under Sec. 10 (I-A), the Central Government may refer a dispute to a National Tribunal for adjudication if it is of the opinion that:

(i) Any dispute exists or is apprehended;

(ii) The dispute involves any question of national importance; or

(iii) The dispute is of such a nature that industrial establishment situated in more than one state are likely to be interested in or affected by such disputes.

(iv) The dispute should be adjudicated by a National Tribunal

The Central Government may refer the dispute or any matter appearing to any connected with or relevant to the dispute. Water it relates to be matter specified in the second schedule or third schedule.

Sec. 10(2) of the Act provides for Compulsory reference of an industrial dispute by the appropriate government. The two conditions to be fulfilled are :

i) An application by the parties to an industrial dispute whether made jointly or separately to refer the matter and;

ii) Satisfaction of the appropriate Government as to the fact that the person applying represent the majority of each party.

If these two conditions are fulfilled then the industrial dispute may be referred to Board, court of Inquiry, Labour Court, Industrial Tribunal or national Tribunal.

Where an industrial dispute has been referred to a Board or Conciliation, Labour Court, Industrial Tribunal or National Tribunal under Sec.. 10, the appropriate Government may issue an orders prohibiting the continuance of any strike or lock out in connection of with such dispute which may be in existence on the date of reference.

Where in an order referring an industrial dispute to a Labour Court, Industrial Tribunal or national Tribunal under Sec.10 the appropriate Government has specified the points of dispute for adjudication, then such authority shall confine its adjudication to those points and matters incidental there to. At the time of referring an industrial dispute to a Labour Court, Tribunals or National Tribunals, the appropriate Government should specify the period with which is authority should submit its award.

Sec.10(1) confers a discretionary power and this discretionary power can be exercised on being satisfied that in industrial dispute exists or is apprehended. There must be some material before the Government on the basis of which it form an opinion that an industrial dispute exists or is apprehended Sec. 10 of the Act confers discretion on the Government to refer a dispute or not. But when conciliation proceedings have failed, the reasons for refusing to refer "the dispute for adjudication must be recorded the Government."

In Sadhu Ram Vs. Delhi Transport Corporation (198311 LLJ 383) the conciliation officer had reported to the government about the failure of conciliation proceeding. On the basis of this report the government referred the dispute to the Labour Court. The Supreme Court held that the Government was justified in thinking that was an industrial dispute and, therefore, the reference to the Labour Court was within its powers.

In Hotel Imperial, New Delhi Vs. Chief Commissioner, Delhi, a dispute between the Imperial Hotel New Delhi and its workmen as represented by the Hotel, workers union, was referred to adjudication under Sec. 10 of the Act. The employers argued that the reference was bad on the grounds the union could not be a party to the reference and the reference was vague as it did not exactly indicate the number of workmen involved. The Supreme Court rejected the connection and held that Sec.36 permits workmen to be represented by their Trade Union.

A decision of the Government issuing the order of reference can be challenged on the ground of mala fides. If a party to and industrial dispute proves that the Government was actunated by mala fields in making a reference, it is liable to be quashed. The tribunals can not go beyond the terms of reference. Decision of the tribunal on any point not referred to it would be invalid being beyond its jurisdictions (U.P. Electric Supply Co., Ltd. Vs. Workers of M/s.S.M. Chandhary. AIR 1980 SC 818)

When a request for reference is made and the Government rejects or declines to make reference it cannot be said that the industrial dispute has ceased to exist. In such a situation the Government can subsequently make a reference when the material and relevant consideration for exercise of power are available. Where Government once, decides not to make a reference of any dispute, it can still later on change its mind and make a reference.

Voluntary reference of disputes to arbitration (Sec. 10-A) : Sec 10 of the Act provides for reference of an industrial dispute by the Government either on its own application The Industrial Disputes Act, 1947having been made to it by the parties to the dispute. The arbitrator under Sec. 10 is appointed by the Government making such reference. But section IO-A, authorises the parties to a dispute themselves to choose their own arbitrator, including a Labour Court. Tribunal or, National Tribunal.

Sec. 10-A provides that where any industrial exists or is apprehended and the employer and the workman agree to refer the dispute to arbitration, they may refer the dispute a arbitration. Such reference by agreement may be made at any time before the dispute has been referred under Sec.. 10 to labour court, Tribunal or National Tribunal. The reference shall be made to such persons or persons (including the Presiding Officer of Labour Court, Tribunal or National Tribunal) as an attractor or arbitrators as may be specified in the arbitration agreement.

Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire. The umpire shall enter upon the reference, if the arbitrators are equally divided in their opinion and the award of the umpire shall prevail. It shall be deemed to be the arbitration award for the purposes of this Act.

An arbitration agreement shall be in such from and shall being by the parties there

to in such manner as may be prescribed. A copy of the arbitration agreement shall be forwarded to the appropriate Government and the consultation officer. The appropriate Government shall within one month from the date of the receipt such copy publish the same in the official Gazette [Sec.10-A(3)].

Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, issue a notification in such manner as may be prescribed. Such notification may be issued within one month from the date of the receipt of copy of the arbitration agreement. When any such notification is issued the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given and opportunity of presenting their case before the arbitrator.

The award given by the arbitrator may affect not only he parties to the agreement but also those who are given opportunity of being heard.

Where an industrial dispute has been referred to arbitration and a notification has been issued under Sec.10-A(3A), the appropriate Government may, by order prohibit the continuance or any strike or lockout in connection with such dispute which may be in existence on the date of the reference.

Strikes and Lock-outs

In the previous unit we have seen the definition of strike and lock-out. Certain types of strikes and lock-outs are prohibited. Sec.22 and 23 of the Industrial Disputes Act lays down the relevant provisions.

Prohibition of strikes and lock-outs (Sec.22 and 23)

In India it is the breach of statutory provisions which renders the industrial strikes illegal. Section 22 of the Act deals with the prohibition of strikes and lockouts. This section applies to the strikes or lock-outs in industries carrying on public utility service. Strike or lock out in this section is not absolutely prohibited but certain requirement are to be fulfilled by the workmen before resorting to strike or by the employers before locking out the place of business.

The main intention is to provide sufficient safeguard against a sudden strike or lockout in public utility service or else it would result in great inconvenience to the general public as well the society.

Section 22(1) provides that no person employed in public utility service shall go on strike in breach of contract.

(a) Without giving to the employer notice of strike within six weeks before striking; of

(b) Within fourteen days : giving such notice; or

(c) Before the expiry of the date of strike specified in any such notice as above said; or

(d) During the pendency of any conciliation proceeding before a conciliations officer and seven days after the conclusion of such proceedings.

You must note that these provisions do not prohibit the workmen from going on strike but require them to fulfill the conditions before going on strike. Further these provisions apply to a public utility service only. According this section, a strike notice is valid only for six weeks. Notice of strike within six weeks before striking is not necessary where there is already a lock-out in existence. A notice of strike shall not be effective after 6 weeks from the date it is given. So the strike must be commenced within that period. However no notice of strike is necessary where there is already in existence a lock out.

Lock-out in Public Utility Service : Sec. 22(2)

The Section lays down that no employer carrying on any public utility service shall lock out any of his workmen.

(a) Without giving them notice of lockout and within six weeks before a locking out; or

(b) Within fourteen days of giving such notice; or

(c) Before the expiry of the date of lockout specified in any such notice as above said; - or

(d) During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceeding.

The notice of lock-out shall not be necessary where there is already is existence a strike. The employer shall send intimation of strike or lock-out on the day on which it is declared to the authority specified by the appropriate Government.

Sec.22(6) deal with the intimation of notice. If an employer receives any notice of strike from any person employed by him or gives to any person employed by him any notice of lock-out, he shall within five days report to the appropriate Government or to such authority as the Government may prescribe.

Madura Coats Ltd. Vs. Inspector of Factories, Madurai

The supreme court emphasised the importance of giving notice. Here the workmen went on a strike without servicing a notice under section 22. They claimed wages for national holiday which fell in the strike period. The court held that were not entitled to wage because they have themselves brought about a situation by going on strike without

giving a notice where by the management was deprived of their right to take work from them.

General Prohibition of Strike and Lock-out (Sec.23)

Section 23 applies to both public utility as well as non-public utility establishment. The section prohibits the commencement of strike during the pendency of conciliation, adjudication and arbitration proceedings and for some time even after the conclusion of such proceedings. It also prohibits strike during the period of operation of a settlement or an award in respect of the matters covered by such settlement or award.

Section 23 lays down that no workman who is employed in any industrial establishment shall on strike in breach of contract and no employer of any such workman shall declare a lock out.

(a) During the pendency of conciliation proceedings before a Board of conciliation and seven days after the conclusions of such proceedings.

(b) During the pendency of proceedings before a Labour Court, Industrial Tribunal or National Tribunal and two months after the conclusion of such proceedings.

(c) During the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings where a notification as been issued Sec.. 10-A3; or

(d) During any period in which a settlement or award is in operation in respect of any of the matters, covered by the settlement or award.

The object of these provisions seems to ensure a peaceful atmosphere to enable a conciliation or adjudication or arbitration proceeding to go on smoothly. According to this section only during the pendency of a conciliation proceeding before a board of conciliation either strike or lock out is prohibited. A conciliation proceeding before conciliation officer is no bar to a strike or lock out under Sec. 10

The term 'in breach of contract' generally denotes the standing orders relating to an establishment approved by the statutory authority. Such standing order govern the contractual relationship between the workmen and the employer. Therefore any strike in breach of the standing orders may well be a strike provided other conditions enumerated in the section are also fulfilled.

Illegal strikes and Lock-outs : Sec. 24)

According to Sec. 24(1) a strike or lock out shall be legal if it is,

(i) Commenced or declared in contravention of Sec.22 in a public utility service;

(ii) Commenced in a contravention of Sec.23 in any industrial establishment (including both public utility and non public utility service);

(iii) Continued in contravention of an order made under Sec. 10(3) or Sec.10-A(4A) of the Act.

Where a strike or Lock-out is in pursuance of an industrial dispute which has already commenced and is in existence at the time of reference of the dispute to a board, an arbitrator, a Labour court, Tribunal or National Tribunal the continuance of such strike or lock-out shall not be deemed to be illegal. However such strike or lockout was not in contravention of the provisions of this Act, at its commencement or contravention of such strike or Lockout was not prohibited under Sec.10(3) or Sec. 10-A(4A).

If a strike is illegal the party guilty of the illegality is liable to punishment under Sec.26 of the Act. In Crompton Graves V. The Workmen (AIR 1978 SC 1489) it was held that in order to entitle the workmen to wages for the period of strike it should be legal as well as justified. Before the conclusion of the talks for conciliation which were going on, the company retrenched as many a 93 of its workmen without even informing the Labour Commissioner. The court held that the strike cannot be said to be unjustified. Where the strike is illegal and at the same time unjustified, the workmen have no claim to wages and must also be punished. Where the strike is illegal and yet justified they have right to claim wages.

If the strike is illegal, workmen are not entitled to wages or compensation and they are also liable to punishment by way of discharge or dismissal. (India General Navigation and Railway Company Ltd., and another Vs. Their workmen AIR 1960 S.C. 219) In workers of Bihar Fire Bricks and Batteries Ltd. Vs. Management; six workmen of the company were dismissed. The union demanded their reinstatement and there was one hour taken strike to protest against the dismissal order. The management ordered deduction of wages for the strike period. Because of it there was another one hour strike. The strike was held to be illegal and at the same time the order of deduction was also held to be bad. The Tribunal observed that strike is a weapon of expressing protest and if the deductions are allowed to be made, it would amount to denying the workmen their right which they have achieved offer a great "deal of struggle and sacrifice.

The Supreme Court, in Bata Shoe Company (Pvt) Ltd. V Ganguly (19611 LLJ 303) observed that participation in an illegal strike may not be necessarily punished with dismissal but when an enquiry has been properly held and the employer has imposed the punishment of dismissal on the employee who has been guilty of the misconduct of joining the illegal strikes the Tribunal should not interfere unless it finds unfair labour practice or victimisation against the employees.

Prohibition of financial aid to illegal strikes and lock-outs

Sec.25 of the Act prohibits financial aid to illegal strikes and lock-outs. The section says that no person shall knowingly spend or apply any money in direct furtherance or

support of an illegal strike or lock-out. For any violation of provisions of this section, punishment is provided by Sec.28 of the Act. Whether a person is a workman or any body if he supports an illegal strike or lock-out by spending or applying any money, such person can be penalised under Sec.28 for violating, the provisions of Sec.25.

Lay-off and Retrenchment

The Industrial Disputes Act, 1947 as originally enacted did not contain any provision for the payment of lay off or retrenchment compensation to the workmen. In order to ameliorate the difficulties of workmen who were laid off, Parliament made provision for payment of compensation.

The provisions as to layoff and retrenchment of workmen as embodies in section 25 to 25E apply only to industrial establishments in which fifty or more workmen on an average per working day have been employed in the proceeding calender month.

These provisions do not apply to industrial establishment (1) in which less than fifty workmen on an average per working day have been employed in the proceeding calender month or (2) which are of a seasonal character or in which work is performed only intermittently. If a question arises whether an industrial establishment is of a seasonal character or whether work is performed intermittently, the decision of the appropriate Government shall be final.

Continuous Service - Sec. 25B defines continuous service. A work and is said to be in continuous service for a period if his service for what period is uninterrupted. It is also provided that any interruption on certain accounts shall not be considered an interruption and the service shall still be deemed to be continuous. These interruptions may be on account of (1) Sickness or (2) authorised leave; or (3) an accident, (4) a strike which is not illegal or (5) a lock-out or (6) a cessation of work which is due to any fault on the part of the workmen.

Where a workman is not in continuous for a period of one year he shall be deemed to be in continuous service under an employer provided he actually worked for not less than.

(i) One hundred and ninety days in the case of a workman employed; below the ground a mine; and

(ii) Two hundred and forty days in any other case.

Similarly, a workman shall be deemed to be in continuous service for a period of six months, if he has actually worked under the employer for not less than.

(iii) Ninety five days, in the case of a workman employed below the ground, in a mine; and

(iv) One hundred and twenty days, in any other case.

In computing the number of days on which a workman has actually worked under an employer shall include days on which.

(i) He has been laid-off

(ii) He has been on leave with full wages, earned in the previous year.

(iii) Absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) On maternity leave, in the case of a female, not exceeding twelve weeks.

Right Workmen laid off for compensation

(Section 25-C) : The section entitles a workman to get compensation from the employer for the period he is laid off. Before a workman may claim layoff compensation be must fulfill the following conditions:

(i) His name must be born on the muster rolls of an industrial establishment.

(ii) He must have completed at last one year's continuous service. (iii) The workman must not be a badly or a casual workman.

If the above requirements are fulfilled a workman whether laid off continuously or intermittently, shall be paid compensation. The workman is entitled to get compensation for all days during which he is laid off, except for such weekly holidays as may intervene. The rate of compensation shall be equal to fifty percent of the total of the basic wages and dearness allowance that would have been payable to him had be not been laid off.

Where a workman is laid off for more than forty five days, no compensation shall be payable after the expirv of the forty five days provided there is any agreement between the workman and the employer to this effect. Thus compensation is payable for a maximum period of 45 days during a period of twelve months.

Where a workman is laid all for a period of forty-five days during a period of twelve months, the employer can law fully retrench him at any time after the expiry of forty-five days. When an employer decides to retrench, he must comply with the requirements of the provisions of Sec. 25 of the Act. Any layoff compensation paid to the workman during the proceeding twelve months may be set off against the compensation payable for retrenchment

So in order to claim layoff compensation the conditions to be fulfilled are:

(1) The workman must have been laid off for reasons specified in Sec. 2 (kkk) and

(2) Requirements as provided by section 25-C.

Badli Workman

Badli workman a workman who is employed in an industrial establishment in the

place of another whose name is borne on the muster rolls of establishment. But he shall case to be regarded as such for the purposes of this section, if he has completed one years continuous service in the establishment. Hence when a workman whose name is actually borne on the muster rolls is absent, some one else is employed in his place on the days he remains absent, and such other person is called a Badli Workman. After completion of one year's continuous service such person shall cease to be a 'Badli Workman'. Therefore, every a Badli workman, whose name is found in the muster rolls, is entitled to layoff compensation. (Vijay Kumar Mills. Vs. Labour Court, 1960 11 LLJ 567 Mad.)

In Radha Raman Sumanta Vs. Bank of India I (2004) SLT 144 case Supreme Court decided that an employee rendered services in vacancy of temporary post for more than 240 days, sufficient to treat him as Badli for purpose of absorption and directed the Bank to absorb the worker in vacant post or in absence of any vacancy in appropriate post and to compensate the worker monetarily.

Sec.25-D imposes a duty upon the employer to maintain a muster roll for the purpose of this chapter. Every workman who has been laid off is required to present himself for work at the establishment on each working day at the appointed time. He shall entry in the muster rolls maintained by the employer. A workman who does not so present himself and sign the muster roll is not entitled to claim lay-off compensation.

Workman not entitled to compensation in certain cases

Sec.25-E provides that a laid off workman shall not be entitled to compensation:

1. If he refuses to accept alternative employment provided that such alternative employment is :

(a) In the same establishment, or

(b) In the other establishment belonging to the same employer situated in the same town or village or situated within a radius of five miles from the establishment to which he belongs; or

(c) In the opinion of the employer, the alternative employment does not call for any special skill or previous experience and be done by the laid off workman, and

(d) The wages which would normally, have been paid to the workman in his previous employment are offered for the alternative employment also.

(2) If he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day.

(3) If the layoff is due to a strike or slowing down of production on the part of workman in another part of the same establishment.

In Natau Mills Ltd. Vs. Employees 'State Insurance' state Insurance corporation, the main issue was whether the employee during the period of lay off would be entitled to go and serve another master? The result of his doing so would be that he is not entitled to receive compensation.

Special provisions relating to lay-out

Under the Industrial Disputes (Amendment) Act, 1976, lay of is prohibited in industrial establishment in which not less than 300 workmen were employed on an average per working day for the proceeding twelve months. Sec.25-M provides that no workman (other than a Badli workman or casual workman) whose name is borne on the muster roll of an establishment (not being an industrial establishment of a seasonal character or in which work is performed only intermittently) shall be laid off by his employer except with the previous permission of the appropriate Government or such authority as may be specified by that Government by notification in the official Gazette. The above provision shall not apply, in case, such lay off is due to shortage of power or natural calamity. In case of a mine where layoff is due of fire, flood, excess of inflammable gas or explosion, the section is not applicable.

Where an application for permission to lay-off has been made and the appropriate Government or authority for granting the permission does not communicate the permission or the refusal to employer in writing within a period of two months from the date of application it shall mean permission for the lay off has been granted on the expiration of the said period of 60 days. An order passed by the appropriate authority either granting or refusing to grant permission, shall be final and binding all the parties. Such order shall remain in force for one year from the date of such order.

On the other hand, where no application for permission made or where it has been refused, the lay-off shall be demand to be illegal from the date on which the workmen have been laid off. In such case; the workmen are entitled to all the benefits under any law in force for the time being as if they had not been laid off. [Sec. 25-M(5)].

However, a workman will not be deemed to be laid off, if he is offered any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience and can be done by the workman) by the employer.

(1) In the same establishment from which he has been laid off, or

(2) In any other establishment belonging to the same employer situated in the same town or village or situated within such distance that it will not cause under hardship to the workman, and also the wages offered for the alternative employment must be the same. The penalty for illegal lay-off is imprisonment upto one month or fine upto Rs. 1,000 or both (Sec. 25-G).

Retrenchment

We have already seen the definition of retrenchments as defined in Sec. 2(OO), It means termination of service of a workman by the employer for any reason what so ever, otherwise than as punishment inflicted by way of disciplinary action.

Retrenchment may be due to variety of reasons such as economy, rationalisation - installation of new machinery etc.

Sec. 25-F of the Industrial Disputes Act, lays down the requirements for a valid settlement. However these conditions apply in case of retrenchment of an employee who has been in continuous service for not less than one year. Sec. 25 F prescribes three conditions for a valid retrenchment namely.

1. One month's notice in writing, indicating the reason for Frenchmen should be given to the affected workmen. After the expiry of the notice period, retrenchment should be effected. If no such notice is given to the workman, he must be paid in lieu of such notice wages for the period of notice.

2. At the time of retrenchment, the workman has been paid compensation which is equivalent to fifteen day's average pay for every completed year of continuous service or any part thereof in excess of six months.

3. Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the official Gazette.

The Supreme court in Indian Hume Pipe company Vs. Their Workmen (1959 II LLJ 830 SC) held that the object of giving retrenchment compensation is to give some relief to tide over the difficulties caused by sudden termination of employment.

In Surendrakumar Varman Vs. Central Government. Industrial Tribunal (1981 I LLJ 386 SC) the Supreme court held that when retrenchment of a workman is invalid instatement can be ordered.

Procedure for Retrenchment

The well recognised principle of retrenchment in industrial law is first come lost go and lost come first go. This principle has been incorporated in Sec. 5 -G of the Act.

The following conditions must be fulfilled before claiming any protection by a work- ' man and they are.

1) The workman must be a workman within the meaning of Sec.2 (S) of the Act.

2) The workman should be an Indian Citizen.

3) The workman should be employed in an establishment which is an Industry.

4) The workman should belong to a particular category of workman in the industrial establishment, and

5) There should be no agreement contrary to the principle of last come first go between the employer and the workman. Any provision in the standing orders to the above effect shall be deemed to be an agreement for the purposes of this section.

When a workman is improperly retrenched, he has a right to retrenchment even if some one has been engaged in his place and an order for payment of remuneration for the period, the employer remained unemployed may be made by the Tribunal - Brohan Kumar Vs. Barauni Oil Refineries (AIR 1971, Pat, 1974)

Re-employment of Retrenched Workman

Sec.25H of the Act is based on sell known Principle that when a workman has been retrenched by the employer on the ground of surplus staff, such workman should first be given an opportunity to join service, whenever an occasion to employ another hand arises. The section imposes a statutory obligation of the employer to give opportunity to the retrenched employees to offer themselves for re-employment. In order to claim preference in employment under this section a workman must satisfy the following conditions:

]) He should have been retrenched prior to re-employment.

2) He should be a citizen of India.

3) He should offer himself for re-employment in response to the notice by the employer.

4) He should have been retrenchment from the same category of service in the industrial establishment in which the re-employment is proposed.

Only a retrenched workman can claim benefit under Sec.25-H. As dismissed, discharged or superannuated workman has no claim for preferential re-employment. When a notice is given to a workman and he fails to offer himself for re-employment, he is not entitled to claim benefit under this section.

Special provisions treating retrenchment

Sec. 25-N of the 1976 Amendment Act lays down that no workman employment in an industrial establishment who has been in continuous service for less than one year shall be retrenched until.

(a) He has been given three month's notice in writing indicating the reasons for retrenchment and the period of notice has expired. If no notice is given, the workman is entitled to be paid in lieu of such notice, wages for the period of notice. But if the retrenchment is under an agreement which specifies a date for termination of service, no notice shall be necessary.

(b) Prior permission of the appropriate Government of such authority for the retrenchment is to be obtained by the employer. Such application for permission shall be made by the employer stating clearly the reasons for the intended retrenchment. A copy of the application shall also be served simultaneously on the workman concerned in the prescribed manner. On receipt of a notice, the appropriate Government or authority after making the necessary inquiry, grant or refuse for reasons to be recorded in writing, the permission for the retrenchment.

Where the Government or authority does not communicate the permission or the refusal to grant the permission to the employer within three months of the date of service of the notice, the Government or authority shall demand to have granted permission for such retrenchment on the expiration of said period of three months. The penalty for illegal retrenchment is imprisonment upto one month or fine upto Rs.1,000 or both. (Sec. 25-Q)

Closure of an undertaking :- Sec.2(cc) of the Act defines the term closure. It means the permanent closing down of a place of employment or part there of. So closure is permanent and it is generally for trade reasons.

Procedure :- An employer who intends to close down an undertaking or an industrial establishment to which Chapter V B. applies, shall serve a notice on the appropriate Government, for previous approval, at least ninety days before the date on which the intend closure is to become affective.

The notice shall be served in the prescribed manner and shall state clearly the reasons for the intended closure of the undertaking (Sec.25-0). However this section does not apply to an undertaking set up for the construction of buildings, bridges, roads, canals dams, or for other construction work.

On receipt of a notice the appropriate Government may, by order direct the employer not to close down such undertaking, if it is satisfied that the reasons for the intended closure of the undertaking are not adequate and sufficient, or such closure is prejudicial to the public interest.

Where an application for closure has been made and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period is sixty days.

Any employer who close down an undertaking without complying with the provisions of Sec.25 O(1) shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs.5,000 or with both (Sec.25R).

Unfair Labour Practices

Unfair labour practice means any of the practices specified in the Fifth Schedule-[Sec.2(ra)] Sec.25-T of the Industrial Disputes Act, prohibits unfair labour practice. The section lays down that no employer or workman or a Trade Union, whether registered Under the Trade Unions Act, 1926 or not shall commit any unfair labour practice. Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with [md which may extend to one thousand rupee or with both.

A new Schedule Fifth has been added by Industrial Disputes Amendment Act, 1982. It contains a list of such practices treated unfair on the part of workmen and their Trade Unions. Since the list is very exhaustive one, here let us consider only a few instances. In unfair labour practices on the part of employers and trade union of employers,

1. To interfere with or coerce workmen in their right to form, jointer assist a trade union. That is, threatening workmen with discharge or dismissal, if they join a trade union or threatening a lock-out or closure, if a trade union is organised.

2. To dominate, interfere with contribute, support, financial of otherwise to any trade union.

3. To establish employer sponsored trade union of workmen.

4. To discharge or dismiss workmen by way of victimisation etc.

Unfair labour practices on the part of workmen and trade unions of workmen.

1. To advise or support or instigate any strike deemed to be illegal under this Act.

2. Tooerce workman or to indulge in acts of force or violence in connection with a strike against non-striking workmen or against managerial/staff.

3. For a recognised union to refuse to bargain collectively in good faith with the employer.

4. To encourage or instigate such forms of coercive actions as will full 'go slow' or 'gherao' of any of the members of are managerial or other staff.

5. To incite or indulge in willful damage to employers' property connected with the industry.

Suggested Questions

1) Explain the role of the statutory bi-partite and tri-partite committees?

2) Define the concepts, continuous service, lay-off, retrenchment and closure.

3) What are the unfair labour practices given under schedule Fifth of the Industrial Disputes Act, 1947.

LESSON - 3

LABOUR LEGISLATIONS RELATING TO WAGES

A) THE PAYMENT OF WAGES ACT, 1936

As observed by the National Commission on Labour, the purpose of laying down a machinery for evolving-a proper wages structure is defeated if malpractices in regard to payment of wages are no checked. The exploitation of workers through non-payment, or short payment or irregular payment or payment in kind rather than in cash, or short measurement or work of piece rate workers has been too well known to need any elaboration. Wide prevalence of all these unfair practices was highlighted by the Royal Commission on Labour in 1931. Their findings and recommendations in the regard led to the enactment of the payment of wages to certain classes of persons employed in industry. Its main objective is to eliminate all malpractices by laying down wage periods and time for making payment and regulating impositions of fines and deductions from wages.

Scope and Coverage

The Act came into force from March 1937, and since then it has been amended not less than 16 times, and that mostly by the State Governments. As it stands at present, it extends to the whole of India. It applies to the payment of wages of persons employed in any factory to persons employed upon any railway by railway administration or, either directly or through a sub-contractor by a person filling a contract with railway administration. The Act also applies to persons employed in an industrial or other establishments like tram-way or motor omnibus service, dock and wharf or jetty inland steam vessel mine and quarry, oil field, plantations, workshop or other establishments engaged in construction, development or maintenance of buildings roads, bridges or canals and generation, transmission and distribution of power or any other energy and to any other establishment of any class of workers engaged in it which the Government concerned applicable to wages payable in wage period which coverage Rs. 1600/ .per month or more.

For the purposes of this Act the term "Wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, expressed or implied, were fulfilled, be payable so a person employed in establishments covered by the Act. It includes any bonus and any sum payable for termination of service and any other additional remuneration so payable, but does not include of any house accommodation, supply of light, water medical attendance or any other amenity contribution to any pension or provident fund, travelling allowance any sum paid to the person employed to defray special expenses, entailed on him by the nature of employment and any gratuity payable on discharge (Sec.12).

Administration

It is a Central legislation, but it is administered by State Governments, except in the case of railways, mines, oil-fields and Central air transport service, where it is enforced by the Central Governments. Both the Central and State Governments are empowered to appoint inspectors under the Act to ensure its enforcement and make rules for carrying out the Purposes of the Act. (Sec. 24 and 26).

Principle provisions

The Act provides that:

1. Every employer is responsible for the payment to persons employed by him of all wages required to be paid under this Act. He must also fix the period in respect of which wages are payable, and no wage period is to exceed one month (Sec. 2 and 4)

2. Wages must be paid on a working day and in current coin or currency notes or in both. After obtaining the written authorisation of the employed person, the employer may pay him the wages either by cheque, or by crediting the wages in his bank account (Sec. Sand 6)

3. All wages must be paid before the expiry of the 7th day in establishments employing less than one thousand workers and in other (cases before the expiry of the 10th day of after the last) day of wage period for which wages are payable (Sec. 5(1)).

4. The discharged workers are to be paid their wages due before the expiry of the 2nd working day from the day on which their employment is terminated. (Sec. 5(2)).

Deduction from Wages (Sec. 7)

No deduction are to be made from wages except those authorised under the Act. Important permissible deductions are on account of fines, absence from duty, damages from loss of goods and money entrusted to employees custody, or for which the employee is accountable, recovery of advances or adjustment of over-payment, income tax provident Fund, pension and ESI contributions, deductions required to be made by the Court or other competent authority premium for postal insurance scheme or any other insurance scheme establishment by the Government for the benefit of the employees, for co-operative societies approved Government and other amenities and service supplied by the employers, as authorised by the Government, with the written authorisation of employees concerned deductions can also be allowed for contributions to the National Defence Fund and (Government approved defence savings schemes Prime Minister's Relief Fund and) to such other funds as may be notified by the Central Government Payment of fees payable by an employee, for the membership of any Trade Union registered under the Trade Unions Act of 1926 and payment of less contributions to any fund constituted by the employer for the welfare of employees and their families.

Deduction for any loss or damage can be made only up to the actual damage or loss caused and that also after the worker has been given an opportunity to show cause against such deductions and it is established that the damage or loss was due to his negligence or default. Deductions for absence from duty is to be in the same proportion to the total wages payable in the wage period for which deduction is made as the period of absence from duty bears to the period during which the employee is required to work.

Deduction for recovery of advances shall be made from the first payment of wages in respect of a complete wage period, but no recovery is to be made of such advances of wages not already earned shall be subject to rules made by the Government who may regulate the extent to which such advances may be given and the installments by which they may be recovered. Deduction for payment to cooperative society and insurance schemes will also be subject to such condition as may be imposed by the Government. (Sec. 7,9 to 13).

Fines are to be imposed for such acts and omissions on the part of employees as are specified by the employer by a notice to be displayed with the permission of the Government, and that also after giving the worker concerned proper opportunity of being heard. No fine is to be imposed on a worker under the age of 15 years. The total amount of fine which may be imposed in anyone wage period on any worker must not exceed three percent of the wages earned in the wage period. (Sec. 8).

No fine imposed on a worker is to be recovered from him by instalment or after the expiry of 60 days from the day it is imposed. All realised fines are to be recorded in register, and these are to be utilised for the purposes beneficial to the workmen in the factory or establishment as may be approved by the Government. (Sec.8)

Any contract or agreement whereby an employed person relinguishes any right conferred by this Act shall be null and void in so far as it aims to depriving him of such right.

The State Government has to appoint an officer of the rank of a Civil Judge or Workmen Compensation Commissioner or a stipendiary magistrate to hear and decide claims arising from deductions from wages or delay in payment of wages. The person concerned has to file his claims within six months either jointly or individually arising from short or delayed payments or from unauthorised deductions or excessive fines or for recovering any other dues under the act. After giving hearing to both, the parties and making necessary enquiries the Authority may direct the refund to the employed person, of the amount deducted unauthorisedly or the payment of delayed wages, together with compensation as the authority may think fit, not exceeding ten times the amount can be recovered as if it was a fine imposed by a magistrate. If the application is found to be malicious or vexatious, the Authority may direct the person filing the application

to pay upto Rs.50 to the person responsible for the payment of wages. The authority can entertain claim even after the expiry of six months limit, if it could be satisfied that the delay was for a sufficient cause (Sec. 15,17,18,19).

If the wages due to the employee cannot be paid on account of his death before payment or on account of his whereabouts not being known, the same are payable to the person nominated by him or where no such nomination has been mad the amount do is to be deposited with prescribed authority and the latter will deal with the amount so deposited in such manner as may be prescribed. The form and manner in which nomination is to be made by the employee are to be such as prescribed by the Government (Sec. 25A)

Appeal. The employer can appeal against the orders or directions of the Authority to the District Court if the total sum directed to be paid as wages and compensation exceeds Rs. 300, and the worker can appeal if the amount of wages claimed exceed Rs.100. The workman can also appeal if he is directed to pay any penalty. (Sec. 17)

Penalties have been provided for contravention of various provision of the Act varying from a fine of Rs.500 to Rs. 1,000 for failing to maintain the prescribed registers and records and refusal to furnish the required information and for obsturing or non cooperation with an Inspector, minimum fine of Rs. 200 which may extend upto Rs. 1,000 has been provided. Minimum imprisonment of one month which can be extended upto six months and a minimum fine of Rs. 500 extending upto Rs. 3,000 may be imposed if a person fails or wilfully neglects to pay the wages of any employed person by the date fixed the Authority. He shall be punishable with an additional fine of Rs. 100 for each_day such failure of neglect continues (Sec. 20).

Equal Remuneration for Men and Women

The Equal Remuneration Ordinance was promulgated in September 1975, and it was replaced by an Act of Parliament on 11th February 1976. This Act puts an end to another unfair practice in regard to payment of wages, that is discrimination between men and women workers in the rates of wages paid to them. The Act provides for the payment of equal remuneration to men and women workers for the same work of a similar nature, and for the prevention of discrimination against women in the matter of recruitment. The Act also provide for setting up of advisory committee for promoting employment opportunities for women, appointment of authorities for hearing complaints, appellate authorities inspectors, etc.

Obligations of Employers

Every employer covered by this Act has to see that:

a) all his workmen are paid their wages regularly and in time and required under the Act (Sec.3)

b) no unauthorised deductions are made and fines are imposed only *for* permissible acts and omissions and that also after the workers have been given adequate opportunity to show cause against the fines and deductions. (Sec. 7,8)

c) registers are maintained with the person responsible *for* payment of wages given particulars of employees, their work and wages paid to them, and showing all the fines imposed and realisations made and also deductions made *from* wages. (Sec. 8,10, 13A).

d) an obstruct of the Act and the Rules made thereunder is displayed at a prominent place in the establishment (Sec. 25).

Right of Employers

Every employer has the right to :

a) deduct from the wages of a worker an amount not exceeding his wages *for* 8 days as may, by any terms, by due to the employer in lieu on due notice, if the worker together will 10 *or* more workers absent himself from duty without notice *or* without any reasonable cause, to go or strike or resort to stay-in strike, (Sec.9(2) and,

b) appeal to District Court against the direction made by the Authority appointed under the Act to payment *of* wages and compensation, if the amount *of* these sums exceeds Rs. 300/- (Sec. 17)

Rights of Employees

Every workman has the right to:

a) receive his wages in the prescribed wage period in cash *or* by cheque *or* by credit to his bank account,

b) refuse to agree to any deductions and fines other than those authorised under this act:

c) approach within six months the authority appointed under the Act to claim unpaid or delayed wages, unauthorised deductions and fines along with same compensation that may be awarded by the Authority appointed by the Government for considering such claims. The time limit of six months for tilling claims may be relaxed for a reasonable cause. (Sec.15, 16)

d) appeal against the direction made by the Authority appointed under the Act for payment of wages and compensation, if the amount of the wages claimed exceeds Rs.100 (Sec. 17)

General Remarks

The payment of Wages Act is a protective legislation which saves the workers from being exploited by ensuring them regular, timely and correct payment of their earned wages in cash rather than in kind and by regulating deductions and tines which

have been eroding the wages so long. Recently the Act has been amended extending its scope covering more employees as well as establishments other than industrial establishments. Importance of such a legislation for improving about and management relations is too obvious to need any comment. The age-old malpractices in regard to the payment of wages have been responsible to not a small extent for deterioration of labour and management relations.

On the whole the working class has benefited from the operation of this act, as now non -payment of wages or unauthorised deductions and excessive fines are not so common as before. But still these malpractices do prevail in many industrial pockets. This is particularly so in mines and plantations where there is still no guarantee that work is properly measured or weighted, especially when the payment is on the basis of piece rates. Some more improvements in administration strengthening of inspectorate, enhancement of penalties for offences under the Act, better vigilance and the part of workers and their unions would go a long way to check these malpractices and protect the wages more effectively.

B) THE MINIMUM WAGES ACT, 1948

The Minimum Wages Act of 1948 is a landmark in the history of labour legislation in the country as it recognises that wages cannot be left to be fixed by market forces or forces of supply and demand alone. The underlying idea or main objective of this legislation is to prevent exploitation of labour through payment of low or seating wages by fixing minimum rates of wages.

Scope and Coverage

Since its enactment in 1948 the Act has been amended several times, As it stands at present, it extends to the whole of India. To start with it covered employment in agriculture and the following 12 other employments mentioned in its schedule:

Public motor transport; mica works; plantation; oil mills; tobacco, lac, tanneries and leather manufactories; woolen carpet making and shawl weaving; rice, flour and Dall mills; local authority, road construction and maintenance or building operations; and stone breaking and stone cursing.

During the last 25 years Central and State Governments have exercised their power under the Act to extend its coverage by adding a number of new employments to the Schedule Under this Act minimum wages can be fixed for all employees who are engaged to do any work, skilled, unskilled, manual or clerical, in a scheduled employment, including "out-workers" to whom articles or materials are given out by another person for manufacturing or processing in his own home or elsewhere, and any other employee declared to be an employee under the Act. The members of the armed forces are, however, excluded from the purview of the Act. (Sect. 1, 3)

Administration

It is a Central legislation, but is administered and enforced by both the Central and State Governments in their respective spheres. The Central Government is responsible for fixing minimum wages in respect of oil fields, major parts, mines, and any corporation established by the Central Government, and any the scheduled employments carried by or under the authority of the Central Government, in other scheduled employments, the State Governments have to fix minimum wages. Both the Central and State .Governments have the powers under the Act to appoint inspectors for enforcing the provisions of the Act, appoint an authority for hearing and deciding claims for short or non-payment of minimum wages, and make rules for carrying out the purpose of the Act. (Sec. 2 (b), 19,30)

Definitions: (Sec.2)

1. **Appropriate Government:** (Sec.2(b)) "Appropriate Government" means:

(i) in relation to any scheduled employment carried on- by or under the authority of the Central Government or a railway administration, or relation to a mine, oil field or major port, or any corporation established by a Central Act the Central Government; and

2. **Competent Authority:** (Sec.2(c)) : "Competent Authority" means the authority appointed by the Appropriate Government by notification in its official Gazette to as certain from time to time the cost of living index number applicable to the employees employed in the scheduled employments in such notification.

3. **Cost of living Index number:** (Sec.2(d)) : "Cost of living index number" means in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed, the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employees in such employment.

4. **Employer:** (Sec.2(e)): "Employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed. It includes:

(i) in a factory, where there is carried on any scheduled employment, any person named as manager of the factory;

(ii) in any scheduled employment under the control of any Government in India, the person or authority appointed by such Government for supervision and control of employees. Where on person or authority is so appointed, the head of the department.

(iii) in any scheduled employment under any local of authority the person appointed by such authority for the supervision and control of employees. Where no person is appointed, the chief executive officer of the local authority

(iv) in any other case, where there is carried on any scheduled employment, any person responsible to the owner for the supervision and control, of the employees or for the payment of wages.

In Re: Polisethi Laksbmayya. (1959-ILLK 556), it was held that when the work is given to the contractors who in turn engage workmen to operate the stone quarries, he cannot be considered to be the employer. The contractor is the employer.

5. Scheduled Employment: Sec. 2(g) : "Scheduled Employment" means an employment specified in the Schedule of this Act or any process of branch of work forming part of such employment.

The definition of' scheduled employment' is a very wide one which covers any process or branch or work which forms part of the employment specified in parts I and II of the Schedule. (Madhya Pradesh Mineral Industry Association. Vs. Regional Labour Commissioner - AIR - 1960- SC- 1068)

6. Wages: (Sec.2): 'Wages' means all remuneration, capable of being expressed in terms of money, which would, if the terms of contract of employment express or implied, were fulfilled, be payable to a person employed in respect of his employment or work done in such employment. It includes

(i) House rent allowance: (it is a part of an employee's wages when he has an absolute right to the same, either under service terms or under the rules Div. Engineer G.I.P. RIy Vs. Mehadeo (AIR 1955-SC-295)

(ii) Payment of remuneration in respect of day or rest. (Associated Cement Co. Ltd., Vs. Labour Inspector (Central) Coimbatore and Another, (1960-ILLJ 192)

But does not include:

(i) The value of:

(a) any house - accommodation, supply of light, medical attendance, or

b) any other amenity or any service excluded by general or special order of the appropriate Government;

(ii) any contribution paid by the employer to any pension Fund or Provident Fund or under any scheme of Social insurance:

(iii) any travelling allowance or the value of any travelling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) any gratuity payable on discharge.

The term 'wages' applies only to earned wages and therefore any claim for potential 'wages' not lie under this Act.

(Arumugham Vs. Jawahar Mills- AIR - 956- Mad.7). The above definition is different form the definition of 'wages' given in section 2 (iv) of the payment of wages Act, 1936 which has wider connotation and coverage.

7. Employee (Sec. 2(i) : "Employee" means any person who is employed for hire or reward to do any work skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed. It includes an outworker to whom any articles or materials are given out by another person to, be made up, cleaned, washed, altered, ornamented, finished, repaired adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person. It also includes an employee declared to be an employee by the appropriate Government but does not include any member of the Armed Forces of the Union.

If an out-worker prepares goods at his residence and then supplies them to the employer, he is to be treated as an employee for the purposes of this Act. (Koknath Nathu Lal Vs. State of Madhya Pradesh (AIR 1960 MP 181).

In Labour Enforcement Officer (Central) Vs. Labour Court Authority under Minimum wages Act, Patna and others (1976-LLJ-II-492), it was held that merely because in the definition of the worked' employee', it has been mentioned that it is to mean a 'person who is employed', it cannot be held that merely because in the definition of the work' employee', it has been mentioned that it is to mean a 'person who is employed it cannot be held that the person concerned must be in employment on the date of application under section 20(2) of the Act, or during the pendency of the proceedings. The expression, who is 'employed' may mean who is employed at any relevant time. The word 'employee' does not include an ex-employee (Municipal Committee Vs. S.L. Kaura (1966-1LLJ 674), though a dismissed employee or ex-employee can validly make an ex-employee. (Municipal Committee Vs. S.L. Kaura (1966-1LLJ 674), though a dismissed employee or ex-employee can validly make an application to claim relief under this Act. (Wake-field Estate Vs. Marutham Uchi (1959- 1 LLJ-393 Mad.).

Fixation & Revision of Minimum Wages(Sec. 3 to 5)

Section 3 provides that the appropriate Government shall;

(i) six the minimum rates of wages payable to employees employed in an employment specified in part I or part II of the schedule and in an employment added to either part by a notification.

The appropriate Government may, in respect of employes employed in an employment specified in part II of the Schedule, instead of fixing minimum rates of wages for the whole state, fix such rate for a part of the State or for any specific class of classes of such employment in the whole State or part thereof.

No difference is to be made in the point of the basic minimum wage between the men and women workers. (Arunit Banaspati Co. Vs. Workmen, (1948-ICR-726)

(ii) review at such intervals as it may think fit, such intervals not exceeding 5 years, the minimum rates of wages so fixed and revise the minimum rates, if necessary.

Where for any reason, the appropriate Government has not viewed the minimum rates of wages fixed by it is respect of any scheduled employment within any interval of 5 years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of 5 years and revising them, if necessary, Until they are so revised the minimum rates in force immediately before the expiry of the said period of 5 years shall continue in force.

In Paravur Coir Vyasaya Sungham V State of Travancore, Cochin (1950- T.C.136), it was held that if the rates once fixed can be revised and altered at any time within a period of 5 years, the fixation of rates themselves within a much shorter period of time beyond the date originally contemplated cannot be said to be illegal or ultravires.

Minimum Number of Employees: The appropriate Government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than 1,000 employees engaged in such employment. If at any time, the appropriate Government comes to a finding after such inquiry as it may make in this behalf that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum rates of wages has arisen to 1,000 or more, it shall fix minimum rates of wages payable to employees in such employment as soon may as be after such finding.

Principles of wage fixation : In Express Newspapers Pvt. Ltd., and another Vs. The Union of India and others (1961-1 LLJ -3391), certain principles were laid down in the matter of wage fixation;

1. There is a minimum wage, which in any event must be paid, irrespective of the extent of profits, the financial position of establishment or the availability of workmen at lower wages.

2. The wages must be fair, i.e., sufficiently high to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to the workmen.

3. A fair wage lies between minimum wage and the living wage which is the goal.

4. Wages must be paid on an industry-wise region basis having due regard to the financial capacity of the unit.

Wage fixation is an important subject in any social welfare programme. The floor level is the bare minimum wage or subsistence wage in fixing which the position will have to be considered from the point of view of the workmen, the capacity of the employer to pay being irrelevant. The fair wage, which lies between the subsistence wage and the living wage, must take not of the economic reality of the situation and the minimum needs of the worker having a fair - sized family with an eye of the preservation on his efficiency as a worker. Hindustan Hosiery Industries Vs. F.H. Lala and another (45 FJR-1974-234-SC)

While the question of the capacity of the employer to pay is irrelevant in the case of fixation of minimum wage, the matter of fair wage stands on a different footing. In the case of fair wage besides the principle of industry - cum region, the employer's capacity to bear the financial burden must also receive due consideration (Sangam Press Ltd., Vs. Their workmen (47-FJR-1975-364)

The question whether the claim for a particular basic wage is just and reasonable or whether the employer has the capacity to pay the claimed basic wages is wholly irrelevant to the demand of the bare minimum wage. The bare minimum wage must be paid by the employer in spite of want of financial capacity. (Wool Combers of India Vs. Wool Worker's Union (AIR 1973-SC-2758).

Minimum wage does not mean wage just sufficient for bare sustenance. At present the conception of a minimum wage is a wage which is somewhat intermediate to a wage which is just sufficient for able sustenance and a fair wage. The concept includes not only the wage sufficient to meet the bare sustenance of an employee and his family, it also includes expenses necessary for his other primary needs such as medical expenses, (expenses to meet some eduction) for his children, in some cases transport charge, etc. The concept of minimum wage is likely to undergo a change, with the growth of our economy and with the change in the standard of living. It is not a static concept. Its concomitants must necessarily increase with the progress of the society. It is likely to differ from place to place and from industry to industry. (Chandra Bhavan Boarding and Lodging Bangalore Vs. Sate of Mysore (1969 (19) FLR-325).

Supreme Court has held that, having regard to the concept of minimum wages, if an employer is not able to pay such minimum wages to his employees, as if fixed by the Government, he can well close down his business. The only consideration relevant for fixation of minimum wage would be the necessity to pay certain minimum emoluments to an employee to enable him to live and work in the industry concerned. (T.P. Sukumaran and others Vs. State of Tamilnadu (53- FJR-1978-301). The Government has power to fix different minimum wages for different industries in different localities. The fixation

of minimum wages depends on the prevailing economic conditions, the cost of living in a place, the nature of the work to be performed and the conditions in which work is performed. (Chandra Bhavan Boarding & Lodging, Bangalore Vs. State of Mysore (1970-(38)FJR).

Once the minimum rates of wages are fixed under the Act the capacity or otherwise of an employer to pay is of no consequence. (U. Unichyil Vs. State of Kerala (AIR 1962-SC-12)

Types of Minimum rates:

The appropriate Government may fix

i) "a minimum time rate" i.e. a minimum rate of wages for time work.

ii) "a minimum piece rate" i.e. a minimum rate of wages for piece work.

iii) "a guaranteed time rate" i.e. a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis.

(iv) "over time" i.e., a minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees.

In fixing or revising minimum rates of wages

(i) different minimum rates of wages may be fixed for

(a) different scheduled employments:

(b) different classes of work in the same scheduled employments:

(c) adults, adolescents, children and apprentices;

(ii) minimum rates of wages may fixed by anyone or more of the following wage-periods namely.

(a) by the hour

(b) by the day

(c) by the month or

(d) by such other larger wage - period as may be prescribed.

Where such rates are fixed by the day or by the month, the manner calculating wages for a month or for a day, as the case may be, indicated (Sec.3(2-A): In what cases minimum rates fixed will not apply? The minimum rates of wages so fixed or so revise shall not apply to any of the employee employed in scheduled employment where:

(i) in respect of an industrial relating to the rates on wages payable to any of the

employees.

(a) any proceeding is pending before a Tribunal or National Tribunal under the Industrial Disputes Act, 1947, or

(b) before any like authority under any other law for the time being in force; or

(c) an award made by any Tribunal, National Tribunal or such authority is in operation; and

(ii) a notification or revising the minimum rates of wages respect or the scheduled employment is issued during the pendency of such proceeding or the operation of the award.

The rate of minimum wages fixed under the provisions of minimum wages Act would prevail over the rates of wages fixed under an award passed by the Industrial Tribunal under the provisions of the Industrial Disputes Act, where the rates fixed under tile award are lower than the rates fixed under the provisions of the minimum wages act even during the period for which the award in force (S.I.L.R.O. Vs. State of Madras, 1954, ILLJ-8) In M/s.Jaydip Industries, Thana Vs. The Workmen (AIR-1972-SC-605) Supreme Court has held that in the light of the provisions of section 3(2A) of the Act, the Tribunal was not bound by the rates of minimum wages fixed by the Government under Section 3 of the Act and it was open to the Tribunal to fix rates of minimum wages to be paid to the workmen concerned in the dispute at figures higher than those fixed by the Government. The fixation may be interfered with by the Courts if the fixation is ultravires the powers of the Government. (Punehiri Bost Transport Vs. State of Travancore, Cochin (AIR -1955. T.C. 97).

Section 3(2A) of the Act classifies industrial establishments into two categories, viz., (1) Establishments in respect of which an industrial dispute regarding rates of wages payable to employees is pending before a Tribunal or National Tribunal, or in which an award of a Tribunal or National Tribunal regulating the rates of wages is in operation, or in which a settlement between the management and the employees regarding wages is in existence. The minimum wages fixed under the Act will not be applicable to such establishments during the pendency of the dispute before the Tribunal or National Tribunal and so long as the award or agreement is in operation; and (2) Establishments which do not fall under the above category to which the minimum wages fixed under the Act will apply. (Zahur Ahmed Vs. State of Karnataka and another (45-FJR-1974-164).

In Bhikusa Yumasa Kshatriya and Sangamner Akola Taluka Bidi Kamgar Union (1959-11 LLJ-578), it was held that the Minimum Wages Act does not cast a statutory obligation upon the State Government to fix or revise the rates of minimum wages directly according to the cost of living index.

It should be noted that where any wage periods have been fixed under Section 4 of the Payment of Wages Act, 1936, minimum wages shall be fixed in accordance therewith.

The existence of awards regarding discrimination in rates of wages and on award linking dearness allowance with price index do not bar a claim of the workmen for minimum wages prescribed under the Act as both the awards do not deal or revise the basic wages of the workers. (Khanna Silk Mills (P) Ltd., Amritsar Vs. Sohan Lai and Another-50 FJR-1977-144). If the wages actually paid fall short of minimum wages then the employees would be entitled to get the amount by which the wages fell short. (Union of India and another Vs. B.O Rathi and others AI R ~1963-Bom-54).

Minimum rate of wages: (Sec. 4): Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under Section 3 above may consist of -

(i) 'cost of living allowance' i.e., a basic rate to be adjusted at such intervals and in such manner as the appropriate Government any direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers; or

.This clause contemplates the fixation of a basic rate of wages and a special allowance at a rate to be adjusted with the variations in the cost of living index number. The adjustment of special allowance ought to be both ways, namely, increase or decrease depending upon the cost of living index number going up or coming down (Stanmore Estate, Yercaud and others, Vs. Commissioner of Labour, Madras and others - 54 FJR - 1979-23). However, the Act does not cast a statutory obligation upon the State Government to fix or revise the minimum rates of minimum wages strictly according to the cost of living index. (Bhikusa Yamasa Kshatriya Vs. Sangamner Akoka Tuluka Bidi Kamdar Union (1959-11 LLJ 578).

(ii) a basic rate of wages or without the cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rates, where so authorised; or

(Hi) an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rates shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate Government.

These wages should be fixe~ on realistic basis in order to partially neutralise the rise of piece of essential commodities, (Hydro Pvt. Ltd. V. Workmen - AIR - 1969 SC - 182). When a minimum rate of wages is prescribed a payable to an employee, what he is

entitled to get is wages, the total thereof at a rate not less than the minimum rate prescribed the rate itself being unitary whatever its component parts under the permissive provision of section 4(1) of the Act, (Chairman of the Madras Port Trust v. Claims Authority - 1957 Mad. 69).

Procedure for fixing and revising minimum wages (Sec. 5)

In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the ariate Government shall either.

(i) appoint as many committees and sub-committees as it considers necessary to hold enquires and advice it in respect of such fixation of revision, as the case may be (a committee without men of experience and knowledge would be illegal - A.S.D.Basha Vs. State of Madras - 1962-63-23-FIR-50); or

(ii) by notification in the Official Gazette, publish its Proposal for the information of persons likely to be affected thereby and specifies a date, not less than 2 months from the date of the notification, on which the proposals will be taken into consideration.

Consultation with the advisory bodies constituted under the Act has been made obligatory on all the occasions of revision of minimum wages. The Government is not bound to consult the Board for initial fixation. However, it is bound to consult the Advisory Board only in the case of revision, when it proceeds on the basis of notified proposals, Chandra Bhavan Vs. State of Mysore -AIR-968-Mys.156). The Committee appointed under Section 5 is only an Advisory Body and the government is not bound to accept any of its recommendations. (Edward Mills Co. Ltd. Beawar Vs.. State of Ajmer (AIR-1954-SC-25).

After considering the advise of the committee or committees so appointed, all representations received by it before the date specified in the notification, the appropriate Government shall by notification in the Official Gazette, fix, or as the case may be, revise the minimum rates of wages in respect of each scheduled employment. Unless such notification otherwise provides, it shall come into force on the expiry of 3 months from the date of its issue. In State of a Madras Vs. PN. Ram Chandra Rao, (1956 LLJ 558), it was held that the notification not specifying in what manner and at what intervals special allowance made payable is to be adjusted is defective and is vitiated by an error of law apparent on the face of the record.

In Bengal Motion Picture Employees Union Vs. Kohinoor Pictures (Private) Ltd and others (1968 ILLJ 387), it was held that employees who are in receipt of higher wages than those fixed under the notification should continue to enjoy the same was not warranted by the provisions of the Act. Government cannot either convert a voluntary payment into compulsorily payment.

Where the appropriate Government Proposes to revise the minimum rates of wages in the manner specified in clause (ii) above, the appropriate Government shall consult the Advisory Board also where the Government follows the procedure laid down in clause (i) above, consultation with the Advisory Board is no required though it is resorted to. (State of Rajasthan and Another Vs. Hari Ram Nathani and others 48. (FJR-1974-SC-176). The ultimate judge to fix or revise the minimum wages is not the Committee or even the Court, but it is the Government (Tourist Hotel, Vs. State of Andhra Pradesh and Another (46-FJR-1974-98). An order fixing minimum rates of wages, without following the provisions of section 5(1) of the Act is invalid and. void. (N.K. Jain Vs. Labour Commissioner-AIR- 1957-Raj-35 (D.B.).

1. Committee & Sub-Committees: (Sec. 5(1) (a) : The appropriate Government shall appoints as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of such fixation or revision of the minimum wage, as the case may be.

In Tourist Hotel, Hyderabad Vs. State of Andhra Pradesh and another (ILLl.-1975-211), it was held that there is nothing in section 5 which prohibits the Government from approaching the Advisory Board for advice or receiving the advice of a Committee constituted under section 5 of the Act. The exercise of the power by the State Government under Section 5 is neither administrative nor quasi judicial but it is a legislative function delegated to the Government by Parliament.

2. Advisory Board: (Sec.7): For the purpose of co-ordinating the work of the committees and sub-committees appointed under Section 5 and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an Advisory Board.

Each of the Committees, Sub-committees and the Advisory Board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employments, who shall be equal in number and other independent persons not exceeding one third of its total number of members. One of such independent persons shall be appointed as the Chairman by the appropriate Government (Sec. 9).

3. Central Advisory Board: (Sec.8) : For the purpose of advising the Central and State Governments in the matters of fixation and revision of minimum rates of wages and other matters under this Act and for co-ordinating the work of the Advisory Boards, the Central Government shall appoint a Central Advisory Board.

The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employments, who shall be equal in number and independent persons not exceeding one-third of its total number of members. One of such independent persons shall be appointed as Chairman of the Board by the Central Government.

The words 'independent person' indicate that such person should not represent either the employers or the employees. (Chandra Bhavan Lodging & Boarding v. State of Mysore (AIR 1968 Mys. 156).

4. Inspectors: (Sec19) : The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purpose of this act and define the local limits within which they shall exercise their functions. Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Powers of Inspectors : Subject to any rules made in this behalf, an inspector may, within the local limits for which he is appointed.

(i) enter, at all reasonable hours, with such assistants (if any), being persons in the service of the Government or any local or other public authority, as he thinks, fit, any premises or place where employees are employed or work is given out to out-workers in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, for purpose of examining any register, record of wages or notice required to be kept or exhibited by or under this Act or rules made thereunder, and require the production there of for inspection.

(ii) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is an employee therein or an employee to whom work is given out thereon.

(iii) require any person given out-work any out-workers to give any information, which is in his power to give, with respect to the names and addresses of persons to, for and from whom the work is given out or received and with respect to the payments to be made for the work.

(iv) seize or take copies of such register, record of wages or notices or portion thereof as he may consider relevant in respect of an offence under this act, which he has reason to believe has been committed by an employer; and

(v) exercise such other powers as may be prescribed.

The Inspector appointed under the Act is required to select a place where the employer is required to put up notices containing the minimum rates fixed together with abstracts of the Act. These notices; etc. are required to be in English and in a language understood by the majority of workers in the establishment.

Following are the penalties for offences under the Act (Sec.22)

a) Payment of wages less than Imprisonment up to six months, the minimum rates of wages or fine of Rs.500/- or both fixed or due under the Act.

b) Contravention of any rule order regarding normal working hours fixed under the Act.

c) Contravention of any other Fine up to Rs.500/- provision of the Act.

d) Power of the Government to exempt employers from liability in certain cases, where public interest -may so require. (Sec.26)

e) Recovery of amount payable to workers under this Act together with compensation awarded by the Authority appointed under the Act, as a fine imposed by a magistrate. Every direction of the Authority appointed under this Act is to be final. (Sec. 20).

f) Appointment of inspectors by the State Government and vesting them with suitable powers for the proper enforcement of the Act. (Sec .19)

g) Application of payment of wages Act, 1936 to scheduled employments where minimum wages are to be fixed. (Sec.22(f)).

h) Declaration of any contract or agreement whereby an employee either relinguishes or reduces his right to a minimum rate of wages other privileges or concessions accruing to him under this act, as null and void, (Sec.25).

i) Payment of undisbursed amounts due to an employee under this Act either because of death before receiving payment, or an account of his whereabouts not being known, by depositing the same with the authority appointed under this Act. (Sec. 22D).

j) Minimum wages for piece rate workers are not to be the less than the minimum time wages if minimum piece wages are not fixed. (Sec.17).

k) Amendment of the Act: There is a proposal to amend this Act so as to reduce time limit for revising wages, enhance penalties and making the Act work more effectively.

Obligations of Employers

It is obligatory for every employer covered by the Act to:

a) Pay to every employee engaged in a scheduled employment under him the minimum rates of wages that may be fixed by the Government under the Act without any eduction except as may be authorised under the payment of wages Act, 1936; (Sec.12)

b) Observe all directions which may be issued under the Act in regard to normal working hours, weekly day of rest with wages and over time rates;

c) maintain registers and records as required by the Government showing particulars of employees, work performed by them, wages paid to them and receipt given by them; (Sec.18)

d) issue wage books or slips to employees in respect of minimum rates if required by the Government, and make authenticated entries in .such wages books or wage slips. (Sec.18).

Rights of Workers

Every worker has a right to:

a) receive minimum wages including overtime wages, as fixed and notified by the Government; and

b) file claim for short payments within 6 months from the date of the minimum Wages became payable. Delay in filing the claim may be condoned for any sufficient cause (Sec.20).

General Remarks

The minimum wages have their own contribution to make towards harmonious industrial relations, particularly in developing countries where working class is largely literate and unconscious and collective bargaining is yet to emerge as a weapon for regulating labour management relations. In our country low or inadequate wages have been and are still an important cause of labour disputes and consequent loss of man days and production. A legislation like the Minimum Wages Act, which improves the level of wages, is bound to improve industrial relations provided it is administered and part in this respect, particularly in carrying out effectively the above mentioned obligations of the employer. Even in fixing minimum wages a supervisor can be of considerable help, as on account of his daily close personal contacts with his workers he can form a fair idea about the pattern of living and consumption of his workers, which cannot be lost sight of in determining minimum wages.

Suggested Questions

1) Explain the procedure for fixing and raising the minimum wages.

2) What are the functions of the Central Advisory Board?

3) Explain the concept of Fair wage and the role of Wage Board.

(C) PAYMENT OF BONUS ACT, 1965

The term Bonus is not defined in the Act. Bonus in, its etymological meaning suggests mere matter of boundary, gratuitously made by the employer to the employees. It has been held by the Supreme Court in MUIR Milles Company Ltd v. Sutri Mills Madzoor Union Kanpura that the term bonus is a cash payment made in addition to the wages and it generally represents the cash incentive give additionally on certain attendance and efficiency being attained.

The payment of bonus had its origin in the generosity of the Textiles Employers during the first World War, when they gave way additional wages as war Bonus. During 1919 and 1920, the Textile Mills in Bombay and Ahmedabad made huge profits and war bonus to the extent of 15% to 35 % were given to the Textile Workers. The became a

regular feature and the Trade Unions and the Mill Owner Association Bombay Vs. Rashtriya Mill Mazdoor Sang, Bombay. This payment acquired the character of right to share in the Profit under the Full Bench Formula and it became a statutory obligation. In order to uplift the Industrial Relations and peace, the Government had set up Bonus Dispute Committee in 1924 and then a Bonus Commission was formed in 1961. The Commission after a long consideration of the concept of Bonus, the basis for payment of Bonus was evolved, taking the clue from the Full Bench Formula and the Supreme Court Judgement in Associated Cement Companies Case. The concept of Bonus is that there is a available surplus out of the Profit from which bonus can be paid and that there is a gap between the Standard Wages and living wages which bonus is intended to shorten. Hence, the Bonus partakes the character of the employees sharing in the property of the concern to which profit they have contributed. In order to establish an enforceable claim-customary, legal and equitable, the Government of India came out with a Bill in the year 1965 land an enactment was made for the payment of Bonus in the year 1965.

Object and the Scheme of the Act

The payment of Bonus Act provides for the payment of Bonus of persons employed in certain establishment, on the basis of profit or on the basis of Production or Productivity and for matter connected therewith. The Scheme of the act is four dimensional:

1. Statutory Liability upon the Employer of Establishment covered by the Act to pay Bonus.
2. Payment of Bonus according to a formula or based on productivity.
3. Payment of minimum and maximum Bonus with the Scheme of set-off and set on
4. Enforcement Machinery.

Salient Features

The Payment of Bonus Act provides for payment of bonus to persons employed in factories as defined in Section 2 (m) of the Factories Act and in certain establishment wherein 20 or more persons are employed. The appropriate Governments are given power to apply the provision of the Act to certain establishments where" in less than 20 persons but not less than 10 are employed. Accordingly the Government of Tamilnadu by a notification - G.O.MS No.833 Labour and Employment dt. 2.8.1978 notified that the provision will apply to certain establishment in which not less than 10 workers are employed or were employed on any day during the accounting year. Establishment includes Departments of the establishment and its undertakings and Branches. Accounting year means an year ending on the date on which the books of accounts are closed and balanced. The accounting year is fixed as from 1st April to 31st March of every year. For the purpose of calculating Bonus it is necessary to find out the available surplus

and allocable surplus. Section 2(4) and 2(6) defines the available surplus and allocable surplus. The Word employee is defined under Section 2(13) means any person other than the apprentice employed on salary or wages not exceeding Rs. 2500 per mensem and the person should have worked minimum 30 days in an accounting year to become eligible to get bonus. Section 2(21) deals with Salary or Wages which means remuneration capable of being expressed in terms of money which would, if the terms of employment express or implied were fulfilled be payable to an employee in respect of his employment or all work done in such employment and includes, dearness allowance, that is to say all cash payments, by whatever name called paid to an employee on account of rise in the cost of living, but does not include certain specified allowances, commission value of amenities, etc. The expression salary or wages as defined in Section 2(51) of Payment of Bonus Act and wages as defined in 2(rr) of Industrial Dispute Act varies as follows:

1. Salary or Wages under the Bonus Act does not include any other allowance which the employee is for the time being entitled to, whereas the expression wages in the I.D. Act include all such allowances.

2. Wages under the I.D. Act includes value of any house accommodation, supply of light, water, medical attendance or other amenities or Services, etc.

3. Under the Bonus Act Commission payable to the employee is not wages. But under the I.D. Act, it is wages.

Payment of Bonus:

Bonus is paid on the following basis:

1. Based on Profits (Section 10)

2. Based on productivity or production (Section 31 A)

Generally the following are common questions that would arise in the matter of Payment of Bonus.

1. Who should pay Bonus?

2. To whom should Bonus be paid?

3. When should the Bonus be paid?

4. What is the amount of Bonus?

5. What is the adjustments/deductions that can be made from the Bonus?

6. What are the records to be maintained?

7. Consequences of contravening provisions?

8. How to settle the Disputes?

9. Why should pay Bonus?

Factories as defined in the factories Act 1948 and establishments wherein 20 or more persons are employed are liable to pay bonus. The Governments of Tamil Nadu by a notification made applicable the Act to establishment wherein not less than 10 workmen are employed. Factories Act defines a Factory as any premises including precincts thereof wherein 10 or more workers were working on any day of the preceding 12 months and in any part of which "manufacturing process being carried on with the aid of power" or "is ordinarily so carried on" or wherein 20 or more workers are working" or were working on any day of the preceding 12 months and in any part of which the manufacturing process is being carried out without the aid of power or is ordinarily so carried on. The Bonus Act does include a mine subject to the provisions of the Mines Act 1952. The act is not applicable to Mobile Unit belonging to the Armed Forces of the Union, a Railway Running Shed or the Hotel or Restaurant or eating place. Act shall not apply to (Sec32).

1. Employees employed by the Life Insurance Corporation of India.

2. Seamen as defined in the Marine Shipping Act 1958.

3. Employees registered under the Dock workers (Regulation of Employment) Act 1948.

4. Employees employed in any industry carried on by or under the authority of any department of the Central Government or the State Government or a local authority.

5. Employees employed by Indian Red Cross Society, Universities and other Educational Institutions, Institutions, establishments not for the purpose of profit, etc.

1. An establishment if newly setup shall pay bonus as per Sec. 16(1) of the Act

In the first 5 accounting year, following the accounting year in which employer sells goods / renders services, the bonus shall be payable in respect of the accounting year in which the employer derives profits. The question of set-off and set-on does not apply as this is the first accounting year of profit. The set off and set on are applicable for subsequent years. Mere change of location, management, name of ownership will not be deemed to be an establishment newly set up. Where the exemption under Section 16(1) is not available bonus shall be paid irrespective of the Profit within 8 months from the close of the accounting year (Section 19). In the case of Public Sector undertakings if they sell goods render services in competitions with the Private Sector and if the income from the above is not less than 50% of the Gross Income the Provision of the Bonus Act is applicable to such Public Sector Undertakings.

2. To whom should the Bonus be paid (Sec. 8)

The Bonus shall be paid to the employee who has worked for not less than 30 working days in that accounting year. There are distinctions between an 'employee' in Sec.2(13) of Payment of Bonus Act and Workman in Sec.2(S) of the Industrial Dispute Act.

a) Employee does not include an apprentice whereas a workman includes an apprentice.

b) 'Employee' includes any person employed in the industry drawing a salary upto Rs. 25000 per mensem to do any skilled or unskilled, manual, supervisory, managerial administrative, technical or clerical work. Whereas a workman means a person who is employed in the industry to do any skilled or unskilled, manual, supervisory, Technical or clerical work but does not include any such person.

i) who is employed mainly in a managerial or administrative capacity or

ii) who being employed in a supervisory capacity draws wages exceeding Rs.1600 per mensem or exercises either by the nature of the duties attached to the Office or by reason of the powers vested in him the functions of a Managerial nature.

c) A Workman excludes persons who are subject to Army Act, or the Air Force Act or the Navy (Discipline). At or persons employed in the Police Service or as Officers or other employees of a Prison. But the employee does not exclude such persons, if they work in establishment which can be termed as Industry within the meaning of Sec. 2(j) of I.D. Act.

3. When should the bonus be paid

Bonus shall be paid for each accounting year. All amount payable to an employee by way of bonus under the Act shall be paid in cash within a period of 8 months from the close of accounting year. If a dispute regarding payment of Bonus is pending before any authority, within one month from the date on which the award becomes enforceable or the settlement comes into operation in respect of such dispute. If the employer gives sufficient reason the appropriate government by order extend the period as if it thinks fit; however the period extended shall not in any case exceed two years.

4. What is the amount of bonus

Available Surplus and Allocable Surplus

As a first step the available surplus shall be worked out according to Section 3 or this purpose, gross profit has to be worked out according to Section 4 in the manner specified in first schedule in the case of banking Company and in the manner specified in the second schedule for other cases. The formula under the Second Schedule are as follows:

1. Net Profit as per P & L Account.

2. Add back provisions for

a) Bonus to employees

b) Depreciation

c) Direct Taxes

d) Development rebate reserves of the investment allowance

e) Any other reserves.

The Total of item No. 2

3. Add back also

a) Bonus paid to the employees in respect of previous accounting year.

b) Excess gratuity provided

c) Donation in excess of amount admissible for Income-tax

d) Any amount due or paid under Income Tax Act.

e) Capital expenditure or capital loss.

f) Loss or expenditure relating to a business situated outside India.

The Total of item No.3

4. Add back also

Income directly credited to reserve other than capital gain and profit relating to business situated outside India.

5. Grand Total of 1,2,3 and 4.

6) a) Deduct expenditure directly debited to reserves other than capital expenditure and loss relating to business situated outside India.

b) Refund of direct tax paid.

c) Cash subsidy received from Government,

7. Gross profit - Item 5 - total of item 6.

Then from the gross profit, the following prior charges shall be deducted as per Section.

a) Depreciation admissible in Income Tax Act.

b) Development rebate reserves/Investment allowance allowed in IT Act.

c) Direct tax as per Section 7.

d) All such other sums are as specified in the third schedule, dividend payable on preferential shares, 8.5% of its paid up equity shares at the commencement of the year, 6% of its reserves shown in the year Balance Sheet at the commencement of the accounting year. Then add adjustment of Direct Taxes, as per provide to Section 5 namely an amount equal to the difference between the direct taxes calculated in accordance with the provisions of the Section 7 for such preceding accounting year after deducting from the amount of Bonus paid to the Employees.

The resultant figure is the available surplus 60% of the available surplus shall be the allocable surplus and the Bonus shall be paid from the allocable surplus.

When the profit and Loss account and Balance Sheet are certified by the Auditors duly qualified, the accuracy of the accounts can not be questioned (Sec.23). The allocable surplus shall be divided by the total wages paid to the eligible employees and the percentage of bonus is thus arrived at. If the percentage of Bonus worked out to less than 8.33% minimum bonus of 8.33% shall be paid subject to a minimum of Rs.100. If the percentage works but to more than 20%, the employer is liable to pay only 20%. The deficiency in the former case shall be carried forward for 'set-off' during the next year and the surplus in the latter case can be carried forward for 'set-on' during the next year as per Sec. 15.

If any employee has not completed 15 years of age at age at the beginning of the year, the minimum bonus payable shall be subject to a minimum of Rs. 60. Where the salary of the employees exceeds Rs.1600 p.m. the Bonus payable to such employee under Sec. 10 shall be calculated as if the salary is Rs.1,000 p.m. (Sec. 12).

5. Disqualification for Bonus (Sec. 9)

An employee shall be disqualified from receiving bonus if he is dismissed from service for

a) fraud, b) riotous, violent behaviour while on the premises of the establishment, c) theft, d) Misappropriation or sabotage to any property of the establishment, Section 8 specified eligibility for bonus and immediately following it, Section 9 lays disqualification for Bonus. Disqualification is not limited to receive bonus for the particular year. This Section intends to deprive the worker of his right to receive whatever he was entitled to. Absence of any reference to any particular accounting year in vivid contrast with the use of clear expression in Section 18 providing for the deduction of the amount for the loss caused to the employer by the misconduct of the employee in the particular accounting year only. The nature of acts and misconducts enumerated in Section 9 are serious and opposed to the principle of sharing in the prosperity of the management which is the fundamental concept of bonus. Accordingly, it empowers the employer to forfeit the entire amount of bonus which should have become due to the employee notwithstanding the fact that such amount did not become due to him in the accounting year in which the misconduct was committed but not in the year or years preceding it.

This view was taken by the Madras High Court in *Wheel and Rim Company of India Ltd Vs. Government of Tamilnadu*. But the Karnataka High Court took a contrary view in the Himalaya Drug Company Case" and held that the disqualification would be only with reference to the accounting year in which the said act of misconduct was committed.

Section 9(b) disqualifies an employee if he indulges in riotous or violent behaviour while on the premises-of the establishment. If the same act is committed outside the premiss of the establishment and the act is connected outside the employment, that does not disqualify him. It is an anomaly in the Act and requires reconsideration. The act of theft, misappropriation and sabotage disqualify an employee if such acts are committed with respect to the property of the establishment.

Minimum and Maximum Bonus - Constitutional Validity

Sections 10 and 11 deal with minimum and maximum bonus. The validity of the Provisions of Section 10 with reference to Article 14 and Article 31(1) was challenged in Jalan Trading Company Vs. Mill Mazdoor Sabha. The grounds of attack were that

a) The concept of minimum bonus unrelated to profit, makes the payment an accretion to wages and leads indirectly to the erosion of capital since such payment, if does not came from profits must come from reserves and capitals. Hence, the prevision is a fraud on the constitution of colourable exercise or power.

b) It offends Art 14 in as much as it makes no difference between companies making profits and the companies having losses.

Considering the Scheme, the Supreme Court observed "Equal protection of the laws in denied if in achieving a certain object persons, objects or transaction similarly circumstances are differently treated by law and the principle underlying that different treatment has no rational relations to the object sought to be achieved by the Law. Examined in the light of the object of the Act and the scheme of' set on' and 'set off, the provision of Payment of Minimum Bonus cannot be said to be discriminatory between different establishments, which are unable .on the profits of the accounting year, to pay bonus merely because a uniform standard of minimum rate of bonus is applied to them. Plea of invalidity of Sec. 10 on the ground that it infringes Act 14 of the Constitution must, therefore, fail, "Classification can only be insisted upon when it is possible to classify and a power to classify need not always be exercised when classification is not reasonably possible. Sec. 10 does not lead to such inequality as may be called discriminatory"

The Act empowers an employer to adjust any pooja bonus or other customary bonus or interim bonus paid to an employee before the date on which such bonus becomes payable. The act also provides that if an employee is found guilty of misconduct causing financial loss to the employer, the employers can deduct the amount of loss from the amount of bonus payable by him in respect of that accounting year and the employee is entitled to receive the balance. As already stated the Bonus should be paid within 8 months from the close of accounting year (Sec. 19). If the employer requires extension

of time he should make on application to the appropriate government disclosing sufficient cause and the total period so 'extended shall not exceed 2 years. If there is any dispute between employer and employee in respect of the Bonus payable under the Act, such dispute will come under the purview of the definition of the Industrial Dispute as defined in Sec. 2(k) of the Industrial Disputes Act.

6. Records to be Maintained (Sec. 26)

The Act requires that every employer should maintain records and registers as prescribed in the payment of Bonus Act. Rule 4 of the Tamilnadu Rules prescribes the following registers:

1. The register showing the computation of allocable-surplus.

2. The register showing the set off and set on of the allocable surplus under sec.15.

3. The register showing the details of amount of bonus paid to each of the employees, deduction made under sec. 17 & 18.

7. Consequences of Contravention & Authorities (Sec. 28-31)

The Act empowers appointment of Inspectors for the purpose of implementation of this Act. To get information from the employer to enter any establishment and to order production of document to examine any person in charge of establishment to take extracts from the records and to exercise such other power prescribed-under the Rules. The act prescribes Penalty for contravening the provisions of the Act and any person contravening the provisions shall be punishable with imprisonment upto 6 months or fine upto Rs.1,000 or with both.

Bonus on the Basis of Productivity

Section 31 (a) inserted in the Act in the year 1976 provides for payment of bonus linked with production or productivity. The pre-conditions for these are

1. An Agreement or a settlement should be entered into by the employees with their employer for payment of Bonus linked with production in lieu of Bonus on Profits.

2. Such Bonus shall be subject to a minimum of 8.33% and a maximum of 20% of the Salary.

General

The provision of this Act will prevail against any law for the time being in force to the extent such law is inconsistent with the provision of this Act. The Act vest the

appropriate Government with power to exempt an establishment or a class of establishment from any or all the provisions of the Act. Before exercising this power Government has to take into consideration the financial and other relevant circumstances or an establishment or a class or establishment which will not be in the public interest to apply all or any of the provisions of the Act. While giving such exemption the Government may impose such conditions as it may think fit to impose. This Act shall be in addition to and not in derogation of the Industrial Dispute Act or any responding law relating to investigation and settlement of Industrial Disputes in force.

Suggested Questions

1) What is "Set-on" and "Set-off" and explain the relevant provisions of the Bonus Act?

2) How to calculate the bonus amount payable to the workers?

LESSON - 4

LABOUR LEGISLATION RELATING TO FACTORY

The Factories Act, 1948

The Factories Act 1948 consolidates and regulates the law relating to labour in Factories. With the introduction of the factory system and the development of modem industry bringing about great reconcentrating of labours in Industrial establishments the matter of health and safety of the workers became all pressing important. In recognition of the fact that the workers on account of their inferior economic position which they have hitherto occupied, would not as a rule, be able to secure proper condition of work without governmental aid. States have enacted many measures to regulate such conditions. These have had reference mainly to hazardous or unhealthful occupations and to the employment of women and children. Factory legislation in India has followed the same lines similar to English Legislation. The previous law relating to the regulations to labour employed in factories in India was embodied in the Factories Act 1934. The experience of the working of that act had revealed a number of defects and weaknesses which hampered factory administration and the present Act of 1948 was enacted to overcome those defects. The existing law applies to industrial establishments where manufacturing process is carried on with the aid of power where 10 or more persons are working and 20 or more workers in all other cases. The pith and substance of the act is the regulation of labour in factories and the ensuring of good working conditions. The act protects humanbeings from being subject to unduly long hours of bodily strain or manual labour. It also provides that employees should work in a healthy and sanitary conditions, so far as the manufacturing process will allow and though the precaution should be taken for their safety and for the prevention of accidents, to ensure those object, the State Government are empowered to appoint Inspectors. The act is applicable to the whole of India except the State of Jammu & Kashmir.

Scheme of the Act

1. Important Definitions
2. Approval, licencing and Registration of Factories.
3. Inspection
4. Health
5. Safety
6. Welfare
7. Working hours of adults
8. Employment of young persons

9. Annual Leave with wages

10. Special provisions

11. Penalties and-procedures

1. Important Definitions (Section 2)

(i) The adult means a person who has completed his 18th year of age and the adolescent means a person who has completed his 15th year of age and who has not completed his 18th year. Child means who has not completed his 15th year of age. An young person means a person who is either a child or an adolescent.

(ii) Manufacturing process means [2(k)] any process for making altering, repairing, ornamenting, finishing, packing, washing, cleaning, breaking up, demolishing or otherwise trading or adopting any article or substance with a view to its use, sell, transport, delivery or disposal. Pumping of oil, water, sewerage or an other substance or generating transforming or transmitting power or composing types for printing by letter press lithography, photography or other similar process or book binding, constructing, reconstructing repairing finishing or breaking up ships or vessels or preserving or storing any article in cold storage.

(iii) 'Worker' means a person employed directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer whether for remuneration or not in any manufacturing process or cleaning any part of the machinery or premises. used for a manufacturing process or in any other kind of work incidental to or connected with the manufacturing process or the subject of the manufacturing process but it does not include any member of the armed Forces of the Union.

(iv) 'Factory' means [Section 2(m)] any premises including precincts thereof (i) where 10 of more workers are working or were working on any day of the proceeding 12 months and in any part of which a manufacturing process is being carried out with the aid of power or is ordinarily so carried on of (ii) where 20 or more workers are working or were working on any day of the proceeding 12 months and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on the factory does not include a mine subject to the operation of the Mines Act or a mobile unit belonging to the Armed Forces of the Union, a Railway running Shed or a Hotel, Restaurant or eating place. Reading the definitions of "worker", 'factory' and 'manufacturing process' together, it is quite reasonable and legitimate to hold that a person to be a worker within the meaning of the Factories Act must be a person employed in the premises or precincts of the Factory. In the case of State of U.P. Vs. M.P. Singh and other 1962 SCR 605, the Supreme Court held that the persons working in the field they are not workers hence, the provisions do not apply to them. In case of

public emergencies, the State Government may, by notification, exempt any factory or class or description of factories from all or any of the provisions of the Act (Except Sec.67) for such period and subject to such conditions, and such notification shall not be made for a period exceeding 3 months at a time. Public emergencies means a state of emergency thereby the security of India or any part of the country thereof is threatened whether by war or by external aggression or internal disturbances..

Occupier Under Sec.2 (n) occupier of a factory means the person who has ultimate control over the affairs of the factory, and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory.

2. Approval, Licensing and Registration of Factories (Sec. 6)

State Government may make rules requiring the submission of Plans of any clause or description of factories to the Chief Inspector of Factories requiring the previous permission in writing to be obtained for the site on which the factory is to be situated and for the construction or extension of any factory or clause or description of factories, require, for the purpose of considering application for such permission, the submission of plans and specifications prescribe nature of such plans and specifications and by whom they shall be certified, requiring registration and licensing of factories of any clause or description of factories and prescribing fees payable for such registration and licensing and for the renewal of licences and also require that no licence shall be granted or renewed unless the notice specified in Section 7 has been given. The Tamilnadu Factories, Rules 1950 prescribes the procedure for approval of the site construction or extension of the Factory. Application for such permission and submission of plans shall be made in Form No. 1 in triplicate accompanied by a flow chart of the manufacturing process with a brief description of the process and the place proposed for effective removal of dust, fumes, gases and for effective disposal of trade wastes, and effluents, a certificate from the Directorate of Health Services and such other particulars as required by the Chief Inspector of factories. An application for Registration of a Factory and grant of licence shall be submitted to the Chief Inspector in form No.2 in triplicate. The Licence so obtained is renewable every year. The occupier shall atleast 15 days before the begins to occupy or use any premises as a factory a written notice containing name and situation of the Factory, name and trades of the occupier, owner of the premise, address to which communication may be sent, the nature of manufacturing process, the total horsepower installed or to be installed, name of the manager of the Factory, no of workers likely to be employee and such other particulars are to be furnished.

3. Inspection

The State Government may appoint Inspectors for the purpose of this Act and be assigned to them such local limits as they may think, fit (Sec.8). The State Government may also appoint Chief Inspector, Additional Chief Inspector, Joint Chief Inspector and

Deputy Chief Inspector and assigned powers. All such Inspectors shall be deemed to be a Public Servant within the meaning of Indian Penal Code. The Inspectors are empowered to enter make examination of the premises, Plant & Machinery, require, the production of any prescribed register and other documents relating to the factory and obtain on the spot or otherwise statements of any persons and exercise such other powers as may be prescribed. The inspectors are also empowered to prosecute conduct or appear before the Court and make any complaint or institute other proceedings arising under the Act or in discharge of his duties as the case may be.

The State Government may appoint qualified medical practitioners to be the certifying surgeons for the purpose of this Act. The Certifying surgeon, shall carry our the examination of young persons engaged in factories in such dangerous occupation and exercise such medical supervision as may be prescribed. (Sec. 10)

4. Health (Sections 11-20)

(a) Cleanliness of the Factory

Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nascences. Accumulation of dirt and refuse shall be removed daily. The floor of every work room shall be provided All inside walls, partition ceilings and stair cases, :if painted with washable water paint, or Varnish to be repainted or rewarm shed atleast once in every period of 5 years. Where they are painted with wash able water paint shall be repainted once in 3 years. In case of white washing and colour washing shall be carried out atleast once in every period of 14 months. (Sec.11). The employer should maintain a record of dates on which white washing, colour washing, Varnishing are carried out in form No.7.

(b) Disposal of wastes and effluents

Effective arrangements shall be made for the treatment of wastes and affluents due to the manufacturing process carried so as to render them innocuous and for their disposal.

(c) Ventilation and Temperature

The act also provides for effective and suitable provisions to secure and maintain in every work room adequate ventilation and such a temperature as to secure reasonable conditions of work and prevent injury to health. The State Government are empowered to prescribe standard of adequate ventilation and reasonable temperature.

(d) Dust and fume

The state Government is also empowered to prescribe measures to prevent the presence of dust or fumes and other impurities and require the factory to provide for exhaust fans.

The rules provide for specified standard of width and height in any building or structure so used as a factory.

(e) Over Crowding

No room in any factory shall be overcrowded to the extend injurious to the workers employed there in (Sec.16) There shall be in every work room of a factory atleast 500 sq. ft. of space for every worker employed there in provided where in the ceiling of the room is 14 and above the level of the floor, the space prescribed above shall not be taken into account.

(f) Drinking Water

In every factory the effective arrangements shall be made to provide and maintain suitable drinking water points conveniently situated for all workers employed there in and sufficient supply of whole some drinking water shall be provide {Section 18), All such points shall be legally marked as drinking water in the local language and in every factory where in more than 250 workers are ordinarily employed provisions shall be made for cooling drinking water.

(g) Latrines and Urinals

In every factory sufficient latrine and urinal accommodation of prescribed type shall be provided functionally situated and accessible to the workers at all times. Separate enclosed accommodation shall be provided for made and female workers and such accommodation shall be adequately, lighted and ventilated. Such accommodation shall be maintained in a clean sanitary conditions and sweeper shall be employed to keep clean the latrines, urinals and washing place. (Sec. 19).

(h) Spittoons

In every factory there shall be provided a sufficient number of spittoons in convenient place and that shall be maintained in a clean and hygienic condition, No person shall spit within the premises of the factory except in the spittoons provided and whoever spits in contravention shall be punishable with a fine not exceeding Rs.5.

5. Safety (Sections 21- 40)

(a) Fencing of Matching

In every factory every moving part of a prime mover, and every fly wheel connected to a prime movers every head race and tail race of every water wheel and water turbines, every part of stock of a lathe and every part of electric generator motor rotary converter, transmission machinery and every dangerous part of any other machinery shall be securely fenced by safeguards of substantial construction which shall be continuously maintained and kept in position while the parts of machinery are running or use Sec. 21

Though the obligation to safeguard is absolute, it is qualified by the test of foreseeability and if protection is provided for by the employer by having a guard and other safeguards. If such safeguard is rendered nugatory by an unreasonable or perverted act on the part of workmen, eventhough such act is not done with any criminal intention there is no liability on the part of the employer (State Vs. Jehtu Jeblahi Patel 1962 2 LLJ 342). The Act specified that prime movers and transmissions machineries are dangerous machinery. The Act imposes a duty to fence whether the prime movers and transmission machinery are dangerous or not. Instructions have been issued to the employees is no defence for breach of statutory obligation to fence. The fence should be normal and that of a fixed guard. If owing to the nature of the operation the safety of a dangerous spot to any machinery cannot be secured by a fixed guard, a device which automatically prevents the operator form coming into contact with the dangerous spot must be provided. A factory occupier does not discharge his machinery safe. Further it has no defence for a factory occupier to see that fence is commercially and or economically impossible or to see that fencing has been carried out by the best known method. The question as to whether a particular part of the machinery is dangerous or not has to be decided by the position of the machinery and the method of operation in ordinary course of operation and dangers which may result from its use.

The State Government are empowered to make necessary rules. The Tamilnadu Factories Rules 1950 has prescribed safety precaution for the various class of factories, Cotton Textiles (Schedule I), Cotton Ginning (Schedule II) Weight Working Machinery (Schedule III) Wrapper Materials Schedule IV), printing presses Schedule V) and all other factories (Schedule VI) have been provided) with special provisions for the safety precautions. Centrifugal machines of Sugar Factories will have to be securely safeguarded as provided in Schedule VII.

(b) Work on or near machinery in motion

The Act also prescribes that whenever it becomes necessary to examine any part of machinery while in motion, or to carry out lubrication or other adjusting operation such examination shall be carried only by a specially trained male worker wearing a tight fitting clothing and the trained persons names should be recorded in the Register prescribed.

(c) Employment of young persons on dangerous machines

No women or young persons shall be allowed to clean, lubricate or adjust any part of prime mover or of any transmission machinery while in motion (Section 22). No young person shall work at any machinery unless he has been fully instructed as to the dangers arising in connection with machines and the precautions to be observed and he has received sufficient training and is under adequate supervision.

(d) Striking gear and devices for cutting off flower

In every factory suitable striking gear or other efficient mechanical appliances shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery and such gear or appliances shall be constructed, placed and maintained as to prevent the belts from creeping back on to the fast pulley. In every factory suitable devices for cutting of power in emergencies for running machinery shall be provided and maintained in every work room and also should be provided with locking devices to prevent accidental staring of the machinery.

(e) Prohibition of employment of workman and children near cotton openers

The Act also specifically prohibits employment of woman and child in any part of the factory for pressing cotton, in which a cotton opener is at work. In every factory every hoist and lift shall be of good mechanical construction and sound material and adequately strength and which shall be property maintained and through examined by a competent person atleast once in every period of 6 months and a register shall be kept in for No.36. In ever factory every lifting machine (other than a hoist and lift) every chain rope and lifting tackle shall be of good construction, sound material adequate months by a competent persons approved by the chief Inspector of Factories.

The also prescribes standards for the operation of revolving machinery. I any part of the plan or machinery used in a manufacturing process is operated at a pressure above the atmosphere pressure, effective measures shall be taken to ensure that the safe working pressure of such part is not exceeded. The pressure appliance should be examined by a competent person approved by the Chief Inspector of Factories. The Tamilnadu Rules prescribe various safety devices for the maintenance pressure appliances. The rule also prescribes that no man, woman of young person shall unaided by another person lift, limit in weight, set out in the schedule. The rule also prescribes that effective screens or suitable goggles shall be provided for mentioned is Schedule I of the rules. No person shall permitted to enter any chamber, tank, vat, pit or other coined space in which dangerous fumes are likely to be with a man whole of adequate size or other effective means of egress. Persons entering into such confined space shall to be allowed to use portable electric light or any other electrical appliances of voltage exceeding 24 volts.

(f) Precaution in case of fire

In every factory there shall be provided such means of escape in case of fire (Sec.38). The Act was amended in the year 1976 where in a provision to appoint Safety Officers where 1000 or more workers are ordinarily employed is made.

6. Welfare

Washing Facilities

In every factory adequate and suitable facilities for washing shall be provided and maintained. Separate and adequately screened facilities shall be provided for the use of male and female worker and such facilities shall be conveniently accessable and shall be kept clean. The Act also provides for the facilities of storing and drying of clothes and sitting facilities. In every factory, there shall be provided and maintained first aid boxes and cup boards equipped with the prescribed contents and number of such boxes or cub boards to be maintained shall not be less than 1 for every 150 worker. In every factory wherein more than 500 workers are ordinarily employed. There shall be provided and maintained an ambulance room and should be in charge of such medical and nursing staff as may be prescribed.

The State Governments are empowered to make rules requiring that in any specified factory where in more than 250 workers are ordinarily employed, a canteen or canteens shall be provided a maintained by the occupier for the use of the workers (Sec.4) The Tamil Nadu Factories Rules 1950 prescribes procedures for the establishment and maintenance of canteen in rule. 65 to 70. The rule prescribes various stands for the canteen buildings. Dining Hall and equipments to be provided at canteen. Every member of a canteen staff be medically examined. The food, drinks and other items served in the canteen shall be served on a non profit basis, the price charged shall be fixed by the Canteen Managing Committee. The rule prescribes the procedure for the election of Canteen Managing Committee and its duties.

In every factory wherein more that 150 workers are ordinarily employed, adequate and suitable shelters or rest rooms and a lunch rooms shall be provided. The State Governments are empowered to prescribe standards in respect of construction of shelters etc. (Section 47) In every factory where in more than 30 women workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of 6 years of such women (Creches) the State Governments are empowered to prescribe the locations and standards. In every factory wherein 500 and more workers are ordinarily employed the occupier shall employ welfare officer as prescribed. The Tamilnadu Government has enacted the Tamilnadu Factories (Welfare Officers) Rules 1953 wherein the qualifications of Welfare Officer and their recruitment procedures have been provided. The conditions of services of a Welfare Officers and their duties are also prescribed.

The following are the duties of Welfare Officers

The duties of Welfare Officer shall be

(i) to establish contacts and hold consultations with a views to maintaining harmonious relations between the factory management and workers.

(ii) to maintain a liaison regarding grievance of workers and to interpret labour policies to the workers in a language they can understand.

(iii) to advice the factory management on obligations statutory or otherwise concerning the application of the provisions of the Factories Act 1948 and the rules made there under.

(iv) to promote relations between management and worker which will ensure productive efficiency and to help workers to adjust and adapt themselves to their working environments.

(v) to advise the management on provisions of amenities, such as sickness and benevolent scheme, gratuity payments, leave etc.,

vi) to advise on welfare provision such as housing facilities foodstuff, social and recreational facilities and sanitations.

vii) to advise factory management on questions relation to supervision and control of notice board and information bulletins to further education of worker and to encourage their attendance at technical institutes.

viii) to encourage the formation of work and form production committees, cooperative societies and safety and welfare committees and to supervise their work.

ix) to suggest measures which will serve to raise the standard of living of worker and in general promote their well being and

x) to work for the improvement of education facilities and to promote adoption of the family welfare measures amongst the workers.

7. Working hours

Sections 51 to 65 prescribe the hours of working in a Factory, weekly holidays, interval for rest, etc. These regulations relating to labour which are of great importance and which have evoked good deal of controversy and are designed to promote welfare of the labouring class by fixing the number of their working hours are provided in the Act. No adult worker shall be required or allowed to work in a factory for more than 48 hours in any week (Section 51) and no adult worker shall be required or allowed to work in a factory for more than 9 hours in and day (Sec. 54). The first day of the week shall be allowed as weekly holiday provided substitution may be allowed on the day immediately before or after the said holiday. (Sec.52) The period of, work of adult in a factory each day shall be so fixed that no period shall exceed 5 hours before he has availed an interval for rest atleast for ½ an hour. The period of work of a adult worker in a factory shall be so arranged that inclusive of his interval for rest shall not spread over more than 10 and ½ hours in a day. The Act also prohibits overlapping of shifts. Whenever a worker works in a factory for more than 9 hours in any day or for more

than 48 hours in any week he shall be paid for overtime work be entitled to the wages at the rate of twice his ordinary rate of wages. (Section 59). The Manager of factory shall issue overtime slips immediately after the completion of the overtime work. The act also restricts double employment The notice of periods of work shall be displayed and correctly maintained in form No.11. The register of adult workers shall be in form No. 12. The Act also specifically provides that no woman shall be required allowed to work in any factory except within the hours of 6 A.M. and 7 PM.

Note : The Madras High Court now allowed the women to work with Night Shift with protection provided by the Employer (The Hindu dt 12.12.2000)

8. Employment of young persons (Sec.67 to 71)

No child who has not completed his 14th year shall be required or allowed to work in a factory. A chile who has completed 14th year or a adolescent shall be issued certificate of fitness and such person should carry a taken giving a reference to such certificate while on work. No child shall be employer for more than 4 1/2 Hours in any day and shall not be employed during the night

The period of work of all children employed in a factory shall be limited to two shifts, which should not spread over more than 5 hours each. As in the case of adult notice of period of work for children should be displayed. The said notice should clearly show the periods during which children may be required or allowed to work.

The manager of every factory should maintain a register or child workers with the following particulars.

(a) The name of each child worker in the factory; (b) the nature of his work (c) the number of his certificate of fairness. The register of child worker shall be in the form No.14.

9. Annual Leave with wages (Sec.78 to 84)

Every worker who has worked for a period of 240 days or more in a factory during a calender year shall be allowed during the subsequent calendar year leave with wages for a number of days calculated at : (1) for an adult 1 day for every 20 days of work performed by him during the previous calendar year. (2) In the case of a child 1 day for every 15 days of work performed by him during the previous calendar year. The provisions of annual leave with wages will not affect pre-existing arrangements and does not allow prohibit future arrangements which would be more generous than provided under this Act. (Alembic Chemical Works Company Vs. Its workmen 1961 I LLJ 328) The leave provided under this Section arises as a matter of right to worker who works for a minimum number working days and is entitled to it. The whole of chapter 8 'Annual leave with wages' deals with the provisions for a certain number of holidays for the workers employed in factories. The provisions of this chapter are mandatory and more

discretion is vested in the employer to with hold the benefits provided for the workers. Whereever cases arise in which the benefits provided for the workers.

Wherever cases arise in which the workers get better terms of services by virtue of their contract of service then such workers shall be entitled to take advantage of their privileges under the contract not withstanding the provisions of this chapter. Where a worker on his own accord does not avail himself of the leave, he can accumulate the unexpired leave subject to maximum Sec. 79(5) provides that the maximum leave that can be accumulated shall not exceed 30 in the case of adult or 40 in the case of a child Where, due to exigencies of situation a worker is not granted the leave, he can accumulate the same without any limit. In the case of termination of services special provisions are made for proportionate leave and payment in lieu thereof. If a worker is discharged or dismissed from his service or quits his employment or is superannuated or dies while in services special provisions from his service or quits his employment or is superannuated or dies while in service during the course of the calendar year he or his heir or nominee as the case may be shall be entitled to get wages in lieu of the quantum of leave to his credit immediately before his discharge, dismissal quitting of employment" superannuation or death calculated at the rate specified even if he had not worked for the entire period making him eligible to avail such leave and such payment shall be paid before the expiry of the second working day from the date of such dismissal or quitting and in the case of superannuation or death before the expiry of two months from the date of such events.

Provision is also made for payment of advance wages for workers going on leave. What constitute wages payable to a worker is also clearly indicated (Sec.80). However, details concerning the calculation of number of holidays, exclusion of certain holidays like weekly holiday and festival holidays, absence without leave.on reasonable grounds upto a certain number of days in a year are all provided in detail.

The State Government may make rules directing Manager of factories to keep, registers containing such particulars as may be prescribed. The Tamilnadu Factories Rules (Rule 87 to 94) prescribe various registers to be maintained and regulates the granting of leave. Leave with wages register shall be in form 15. Every worker shall be provided with leave book. Sec. 84 gives powers to State Government to exempt factories if it satisfied that the leave rules applicable to workers in a factory provide benefit which in its opinion are not less favourable than those for which the act makes provisions where an exemption is granted the Manager of the Factory shall display notice giving full details of the system established in the factory for leave with wages and shall send a copy to the Inspector.

Special Provisions (Sections 85 to 91)

The State Government may by notification declare that all or any of the provisions

of Act shall apply to any place where in the manufacturing process carried on with or without the aid of power not with standing the number of persons employed therein is less than 10 for working with the aid of power and less than 20 for working without the aid of power and also persons working with the permission of or under agreement with such owner. When the State Government declares by notification that all or any of the provisions of the Act shall apply to premises such premises shall be deemed to be a factory. While examining the question of the constitutional validity of this Section the Supreme Court held that the section itself is not discriminatory to as to infringe Article 14 of the Constitution (AIR) 1963 SC 806) nor does the provision amounts to authorising imposition of unreasonable restriction upon fundamental right of the owner of the Factory to carry on his business, Sec.85 is not ultra varies Article 14 and the power conformed is not an unguided and uncanalised power, but there is a policy and purpose underlying the Section which is to guide and govern the element of the legislative power as a whole and in modern times when the legislature enacts laws necessary to delegate subsidiary or ancillary power to delegates of their choice for carrying out the policy laid down by their Acts. In dealing with the question as to the vires of nay statute on the ground delegation of enunciated its policy and principle and delegated to the subordinate authority accessory or subordinate powers for the purpose of working out the details within the frame work of that policy in principle. (AIR-1963 SC 1591).

The State Governments may also exempt any work shop or work place where the manufacturing process carried on and is attached to. public Institution maintained for the purpose of education, training Research or reformation from all or any of the provisions of this Act. However, no exemption shall be granted from the provisions relating to hours of work and holidays, unless the Institution gets specific approval.

Where the State Government is of the opinion that any manufacturing process or operation carried on in a factory expose any person employed in it to [a serious risk of bodily injury poisoning or disease it may make rules to) those factories specifying the operation as dangerous, prescribe or restrict employment of women, adolescents or children, provide for periodical medical examination, provide for protection of all persons employed prescribe; restrict or control the use of any specified material require the provision of additional welfare amenities and supply of protective equipments and provide for directing the Manager or occupier to carry out such measures (Section 87)

Notice of Accidents (Section 88) Where in any factory an accident occurs which causes death or which causes any bodily injury by reason of which the person injured is prevented from working for period of 48 hours or more immediately following the accident or which is of such nature as may be prescribed, the Manages of the factory shall send notice to such authorities. The Manager of every factory shall maintain a register of accident in Form No. 26 and Register of dangerous occurrence in From 26A. The notice of accident shall be in form no. 18. Where any worker contracts any disease

specified in the schedule, the Manager of the factory shall send notice to such a authorities, the State Government may of considers it expedient appoint competent person to enquire into the cause of any accident occurring in a factory or in any case where the disease has been or is suspected and also may appoint one or more persons possessing local or special [knowledge to act as assessors in such inquire] The State Governments are empowered to make rules regulating the procedures of inquiries.

The Inspector is empowered to take sufficient sample of any substance used or intended to be used in the factory which in the belief of the Inspector is in contravention of any of the provisions and in the opinion of the Inspector likely to cause bodily injury or to the health of workers. Before taking samples the Inspector should inform the occupier and taken the samples during the normal working hours.

11. Penalties & Procedures

If there is any contravention of any of the provisions of the Act or Rule made therein or to any order in writing given the occupier and Manager shall each be guilty of an offence and punishable with imprisonment for a term which may extend to 3 months or with fine which may extend to Rs. 2,000/- or with both and other contravention is continued after conviction with a further fine which extent to Rs. 75/- for each conviction, with the contravention to Rs. 75/- is so continued (Section 92)

The reasonableness holdings the occupier and the Manager responsible for any contravention were examined by the courts and it was held that such imposition of sentence can not be regarded as unreasonable (1967-1 LLI 44) Now with standing all that has been said regarding progressive legislation for protection of the workers, it is scarcely worth consideration if the laws are not enforced. More important than the hasty enactment of additional law is the adoption of method of administration that will enforce the existing once. In several instances and for various reasons the enforcement of labour laws by factory inspectors have been found to be ineffective. Officials some times point to their record of numerous prosecution as evidence of their efficiency in office. Such a record may prove exactly the opposite. An interesting method of unforeseen complaints which is more and more coming into prominence has to give the authorities powers to stop work of a machine or in an establishment which violates the law. The possibilities of detecting all violations by official inspection are obviously limited and the burden of proof is always on the prosecution. Section 92 is of penal section and it ought to be construed strictly. When the premises who has no control over the operation shall not be held liable. If any person who has been convicted of any offence is against found guilty of offence involving a contravention of the same provision shall be punishable in a subsequent conviction with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs. 1,000 or both. Whoever wantory obstructs the Inspector or fails to produce on demand any register or other document or conceals or prevents any worker in the factory shall be punishable with imprisonment

which may extend 'to 3 months or with fine which may extend to Rs. 500/- or both. The Act also provides for a penalty.for the offence committed by a worker if any worker contravenes any provision of this act and rules imposing and duty and all such workers shall be punishable with fine which may extend to Rs. 20.

Where the occupier or Manager of Factory is charged with an offence punishable under this Act, he shall be entitled to have any other person whom he charges as the actual offender. No Court shall take conscience of an offence except on complaint by or with the previous sanction in writing of an Inspector. The Presidency Magistrate or a Magistrate of a Second Class shall the any offence and no cognizance shall be taken unless the complaint is made within 3 months of the date on which the alleged commission of the offence came to the knowledge of the Inspector.

The Tamilnadu Factories Rules provide for the submission of returns and maintenance or records. The Manager of every Factory shall send half yearly returns and annul returns in the prescribed forms. The Manager of the factory shall maintain a muster role of all workers in form No.25 and time card for each worker in form No. 25

Band the Manager shall maintain inspection books Appeals (Sec. 107) The Manager of a factory may appeal to the prescribed authorities to cancel or modify his order passed against him and the notice of hearing of appeal in mandatory.

The provisions of Factories Act is a piece of a progressive legislation and it should be construed in favouring of the workers but at the same time it should not be used merely for the purpose of harassing the employer and the employer position has to be considered. When the management acts reasonably and shows a genuine desire to meet any complaint to rectify any irregularity and he is no absence of good faith, technical infringement of the provisions is uncalled for. On the other hand if we see the work scheme of the act, learning the minor pricks in the administratives of the act as observed above the provisions of safety, health and welfare of the workers are certainly essential in view of the large and growing industrial activities in the country and the provisions of the factories. Act serves to achieve the aim of a welfare state as enunciated in directive principles of state police of our constitution.

Suggested Questions

1) Define the terms factory, young person and manufacturing process as used in the Factories Act, 1948.

2) What are the welfare measures to be adopted by the occupier of the factory as required in the Factories Act, 1948?

3) Explain the safety provisions of the factories Act, 1948?

4) State the restriction imposed by the Factories Act, 1948 in respect of the employment of young persons and women in a factory.

LESSON - 5

LABOUR LEGISLATIONS RELATING TO SOCIAL SECURITY MEASURES

(A) THE WORKMEN'S COMPENSATION ACT, 1923

With the industrialisation of the economy and the advancement of the technology, the industrial accidents were on the increase. Such accidents resulted either in death or permanent / temporary disablement of the workers as also loss of their earning capacity. Therefore, the need for legislation provision for the payment of compensation in such eventualities was felt necessary. The enactments of the legislation of this kind on the one hand would create awareness in the mind of the employers to provide such condition of work whereby accidents could be minimised and on the other hand, workers would also be attracted to even those industries which are prone to industrial accidents. The Workmen's Compensation Act was passed in India in 1923 to achieve these ends'.

In the Gazette of India 1922, Part V, Page 313, the need for such a legislation has been emphasized as under.

"The growing complexity of industry in this country with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of workmen themselves renders it advisable that they should be protected as far as possible from hardship arising from accidents. A legislation of this kind helps to reduce the number of accidents in a manner that cannot be achieved by official inspection and to mitigate the effect of accident by provision for suitable medical treatment, thereby making industry more attractive to labour and increasing its efficiency. The Act provides from cheaper and quicker disposal and disputes relating to compensation through Special Tribunals than possible under the civil law"

The theory of workmen's Compensation was expressed in the slogan attributed to David Lloyed George. "The cost of the product should bear the blood of the workmen"

Though the need for a legislation providing for compensation for total or serious accidents was felt as early as 1884, the question of framing legislation was taken up by the Government of India only in 1920. Prior to the enactment of this Act, workers heirs could claim compensation under Fatal Accidents Act, 1865. This Act was limited in its application as compensation under this Act was payable only if the accident was use to wrongful act, neglect or default of the employer or person who caused the death or on the basis of proof of negligence under Civil Law.

Towards the end of 1920, the Government of India with a view to framing legislation and granting compensation to the workmen for fatal or serious accidents appointed a small committee consists of Legislative Assembly Members Employer's and Worker's

representatives and medical and insurance experts. Based on the committee recommendations a bill was introduced in the Central legislature in 1922 and was passed with some modifications in 1923. The Act came into force from 1st July 1924. The Act marked the first step towards the introduction of social security legislation in India.

In the beginning as an experimental measure, the Act was made applicable only to workers whose occupation was hazardous and who were engaged in an organised industry. The Act was Amended several times, important of them being amendment Act of 1959, for the first time removed the distinction between an adult and a minor and provided for penalty in the event of failure to pay compensation. The waiting period of 7 days was reduced to 5 days for claiming compensation and the Schedule was also widened. The amendment Act of 1962 revised the scales of compensation and specified the injuries leading to permanent disablement.

The Amendment Act of 1976 widened the scope of 'workman'. Any person employed on a monthly wage upto Rs. 1600/- in any such capacity as specified in Schedule 11 of the Act is now covered under the Act as against limit of Rs. 500/- prior to 1st October, 1975. This has been done in the context of the wage levels prevailing at the time of 1966 amendment in private as well as in public sectors. The Amendment Act also substituted a new schedule for Schedule IV which was given retrospective effect from 1st October, 1975 whereby the amount of compensation payable in the event of death total disablement temporary disablement to workman was considerably increased

Object

"The object of the Workmen's Compensation Act is to provide social security, ensure social justice and not to punish and employee".

The object of the Act laid down in the Permeable to the Act which reads: "An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.

The Act recognises the fact that a workman who is open to hazardous risks should be adequately protected in case of accident which disable him partially or totally. The Act therefore is a piece of social security legislation which ensures security and justice to the workman. At the same time, it does not punish an employer as the employer is liable to pay compensation only when personal injury is caused to the workman by accident which has arisen out of and in the course of his employment. Moreover, the worker is very often adequately insured by the employer to protect himself against the liability.

The object of the Workmen's Compensation Act has been best expressed by the Royal Commission on Labour in India in the following words, "Moreover, provisions for compensation is not the only benefit flowing from workmen's compensation

legislation; it has important effects in furthering work on the prevention of accidents, in giving workmen greater freedom from anxiety and inrendering industry more attractive"

In Executive Engineer PWD (B&R), Udaipur and Another Vs. Narsin Lal (52-FJR-1978-67) it was laid down that the theme of the Workmen's Compensation Act, 1923 is to provide security to a workman who sustains partial incapacity resulting in a loss in his earning capacity. The protection so afforded to the workman is independent of the Acts of grace or mercy which the employer might show to him. In a welfare state, the protection offered to a disabled workman cannot be allowed to rest on the mercies and grace shown by the employer. If the employer does so, it is commendable, but the workman has still a stake in his employment which is granted to him under the Act.

Object and Scope

The Act is a social security legislation. In it's preamble provides for the payment ,by certain classes of employers to their workmen of compensation for injury accident. The Act impose statutory liability upon an employer to discharge his more obligation towards his employees when they suffer from physical disabilities and diseases during the course of employment in hazardous working conditions. The Act also seeks to help the attendants of the workmen rendered destitute by the 'accidents' and quicker mode disposal of disputes relating to compensation through special proceedings than possible under the civil law. The Act extends to the whole of India.

Definitions (Section 2)

Some important definitions are given below:

(i) Dependent (Section 2(1) (d))

Section (2) (1) (d) of the Act defines "dependent" as to mean any of the following relatives of a deceased workman, namely:

(i) a widow, a minor legitimate son, an unmarried legitimate daughter, or a widowed mother and

(ii) if wholly dependent on the earnings of the workman at the time of his death, a son or daughter who has attained the age of 18 years and who is infirm; and

(iii) if wholly or in part dependent on the earnings of the workman at the time of his death;

a) a widower.

b) a parent other than a widowed mother.

c) a minor illegitimate son, unmarried illegitimate daughter or a daughter legitimate or illegitimate if married and are minor, or if widowed and a minor.

d) a minor brother or an unmarried sister or a widowed sister if a minor.

e) a widowed daughter -in-law.

f) a minor child of a pre-deceased son.

g) a minor child of a pre-deceased daughter where no parent of the child is alive on.

h) a paternal grandparent, if no parent of the workman is alive.

The expression, "widowed mother" was clarified by Calcutta High Court in Munado Dev Vs. Bengale Bone Mills; A.I.R. Cal. 85, that widowed mother does not include widowed step mother'. Similarly minor brother means minor uterine brother only as was held in General Manager Gwalior Sugar Co. Debra Vs. Sri Lal, AIR 1958 M.P.133.

In Kaveri Structurals Vs. Bhagyam 1977 II LLJ 529, it was held that when a "dependent" as defined in section 2 who preferred a claim died during the pendency of the proceedings, his or legal representatives could prosecute the claim for compensation as the right remained vested in the dependent upto the time of death and upon death passed to his/her heirs or legal representatives. It was held in B.M. Habbebullah Maricar Vs. Periaswamy 1977 II LLJ 322 that under the Act benefits is not intended to be given to all heirs of a deceased workman but only to those who, to some extent depend upon him for their daily necessities. Kinship, coupled with dependency is criterion for a person to fall within the ambit of definition. The benefit is provided for the workman himself and his dependents and to no others. Otherwise the object of the Act will not be achieved if the benefit is provided by the Act to' persons altogether the class contemplated by it.

(ii) Employer (Section 2(1) (d)

The following persons are included in the definition of employer:

a) any body of persons incorporated or not;

b) any managing agent of the employer.

c) legal representative of a deceased employer. Thus, one who inherits the estate of the deceased is made liable for the payment of compensation under the Act. However, he is liable only upto the value of the estate inherited by him

d) any person to whom the services of a workman are temporarily lent or let on hire by a person with whom the workman has entered into a contract of service or apprenticeship.

A contractor falls within the above definition of the employer. Similarly, a General Manager of a Railway is an employer - Baijnath Sing Vs. O.T. Railway AIR 1960 ALL 362.

(iii) Managing Agent (Section 2(1) (f)

Section 2(1)(t) defines 'Managing Agent' as to mean any person appointed or acting as the representative of another persons for the purpose of carrying on such

other person's trade or business, but does not include an individual manager subordinate to an employer.

(iv) Minor (Section 2(1) (ft)

In terms of section 2(1) (ft) 'minor' means a person who has not attained the age of 18 years.

(v) Qualified Medical Practitioner Section 2(1) (i)

Qualified Medical Practitioner means any person registered under any Central Act an act of the legislature of a State providing for the maintenance of a medical practitioners, or any area, where no such last mentioned Act is in force, any person declared by the

State Government by modifications in the official Gazette to be a qualified medical practitioner for the purpose of this Act.

(vi) Seaman (Section 2(1) (k)

'Seaman' under Section 2(1)(k) means any person forming part of the crew of any ship but does not include the master of the ship.

(vii) Wages Section 2(1) (m)

According to Section 2(1) (m) the "wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or a provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment. Wages include dearness allowance, free accommodation, overtime pay, etc. (Godawari Sugar Mills Ltd Vs. Shauntal; Chitru Tanti Vs. TISCO; and Badri Prasad Vs. Trijugi Sitaram)..

While driving the bus, on account of an accident, the driver of the bus died, on a claim for compensation made by widow was held that line allowance and might out allowance came under the privilege or benefit which is capable of being estimated in money and can be taken into consideration in computing the compensation as part of 'wages' KSRTC Bangalore Vs. Smt. Sundari, 1982 Lab. L.C.230.

3. Workman (Section 2 (1) (n)

Workman has been defined under Section 2 (1) (n) as to mean any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is

i) a railway servant as defined in Section 3 of the Indian Railway Act 1890, not permanently employed in any administrative, district or sub divisional office of a Railway and not employed in any such capacity as specified in Schedule 11; or

ii) employed on monthly wages not exceeding Rs.1,000 in any such capacity as is specified in Schedule 11. Whether he contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing, but does not include any person working in the capacity of a member of the Armed forces of the Union and any reference to a workman who has been injured shall, where the workman is dead, includes a reference to his dependent's or any of them.

However, the State Government has been empowered after giving not less than three months notice of its intention so to do may be a like notification add to Schedule Il any class of person employed in any occupation which it is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply within the State to such classes of persons:

Provided that in making such addition the State Government may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.

4. Disablement

The Act has classified disablement into two categories viz. i) Partial Disablement and (ii) Total Disablement

i) Partial Disablement (Section 2(1) (g)

"Partial Disablement" means

a) Where the disablement is of a temporary nature: Such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and

b) Where the disablement is of a permanent nature: Such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time. But every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement.

Schedule I contains list of injuries to result in Permanent Total / partial Disablement.

In case of temporary partial disablement, the disablement results in reduction of earning capacity in respect of only that employment in which he was engaged at the time of accident. This means the workman's earning capacity in relation to other employment is not affected. But in case of permanent partial disablement, the disablement results in reduction in his earning capacity is not only the employment in which he was engaged at the time of accident but in all other employment.

Whether the disablement is temporary or permanent and whether it results in reduction of earning capacity, the answer will depend upon the fact of each case, except when the injury is clearly included in part II of Schedule I. In the case of Sukhai Vs.

Hukam Chand Jute Mills Ltd., A.I.R. 1957 Cal. 601, it is observed.

"If a workmen suffers as a result of an injury from a physical defect which does not in fact reduce his capacity to work but at the same time makes his labour unsalable in any marker reasonably accessible to him, there will be either total incapacity for work when no work is available to him at all or there will be a partial incapacity when defect makes his labour saleable for less than it would otherwise fetch. The capacity of a workman may remain quite unimpaired, but at the same time his eligibility as an employee may be diminished or lost if such a result ensure by the reason reduced the capacity of the workman to work. He can establish a right to compensation, provided he proves by satisfactory evidence that he has applied to a reasonable number of likely employers for employment, but had been turned away an account of the results of the accident visible on his person.

If after the accident a worker has become disabled, and can not do a particular job but-the employer offers him another kind of job, the worker is entitled to compensation for partial disablement General Manager, GIP RIy. Vs. Shankar, AIR 1950 Nag 307.

Deemed to be Permanent Partial Disablement; part 11 of Schedule I contains the list of injuries which shall be deemed to result in permanent partial disablement.

Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent to the loss of that limb or member.

Note to Schedule I - On the question whether "eye" is member or limb" as used in the note to Schedule I if was held that considering the meaning as stated in the Oxford Dictionary as also in the Medical Dictionary it would be said that the words "limb or member" include any organ of a person and in any case it includes the ye" Lipton (India) Ltd. Vs. Gokul Chandran Mandal : 1981 Lab Le. 1300.

(ii) Total Disablement (Section 2(1)(i)

"Total disablement" means, such disablement whether of a temporary or permanent nature, which incapacitates a workman for all work which he was capable of performance at the time of accident resulting in cash disablement. Provided further that permanent total disablement shall result from any combination of injuries specified in part 1'1 of Schedule I, where the aggregate percentage of loss of earning capacity, as specified in the said part 11 against these injuries amount to one hundred percent or more.

Some judicial Interpretations on the subject are as follows

The expression "incapacitates a workman for all work" does not mean capacity-to work or physical incapacity. If due to any physical effect a workman is unable to get any work which a work man or his class ordinarily performs, and has thus loss the power to earn he is entitled to compensation for total disablement: Ball V. William Hunt & Sons Ltd:, 1912 A.O.496. It is immaterial that the workman is physically fit to

perform some work. Thus, where a workman, through physically capable of doing work cannot get employment in spite of his best efforts: he become incapacitated for all work and hence entitled to compensation for total disablement.

Loss of physical capacity is co-extensive with loss of earning capacity but loss of earning is not .so co-extensive with loss of physical capacity as he may be getting the same wages even though there may be loss of physical capacity. In a case permanent partial disability caused to a workman in accident while working on ship, he got pain in his left hand and experiencing difficulty caused to a workman in accident while working on ship, he got pain' in his left hand and experiencing difficulty in lifting weights. Held that workman can be said to have lost his earning capacity even though getting same amount of wages as before: Mangrupaji Vs. Robinson 1978 Lab. Le.1567 (Bom)

Where the worker lost his vision of one eye permanently in accident in course of his employment in colliery, the compensation should be assessed in accordance with item 26 part 11 in schedule L Katras Jherriah Coal Co. Ltd., Vs. Kamakhya Paul, 1976 Lab I.e.751.

In an injury the workman, had amputated his left ann from elbow, who was a carpenter. It was held by the S.C. in Pratab Narain Singh Deo. Vs. Sriniws Sabta; 1971 Lab L.J .235 that it is a total disablement as the carpenter cannot carry his work with one hand and not a partial permanent disablement.

Where the workman, a driver of bus belonging to the employer was involved in an accident which resulted in an impalement of free movement of his left hand disabling him from driving vehicles, it was held that this is not one of the injuries mentioned in the 1st schedule which are accepted to result in permanent total disablement. In the present case the workman was also capable of performing duties and executing works other than driving vehicles. Nature of injury to be determined not on the basis of the work he was doing at the time of accident. Divisional Manager KSRTC Vs. Bhimaiah 1977 II LLJ 531. (Kant).

Position of a Casual Workman

In Popatalal Maya Ram Vs. Bai Lakhu (AIR 1952, Saurashtra 57) where the widow of the deceased labourer who was engaged by an agriculturist for the purpose of deepening an old well for purposes of irrigation, as a casual worker; being employed for employer's business is a workman, his employment must be both of a casual nature and who must be employed otherwise than for the purpose of the employer's trade or business. In fact casual worker is a question of fact which depends on the individual facts of each case.

In Baj Chandra and others Vs. Godhra Borough Municipality 48 FJR 1947-165) it was held that if a person is continuously serving his employer for a period of 3 or 4

years on daily wages he cannot be said to be a casual employer. In Smt. Kamala Dev and others Vs. Bengal National Textile Mills Limited and Another (47-FJR-1975-14) it was held that for taking out a labourer from the category of "workman" both two condition viz., (1) that the employment was of casual nature and (2) that the employment was otherwise than for the purpose of the employer's trade or business must be proved. The mere fact that - a worker worked for only two days before he died in an accident would not automatically show that his employment was of casual nature (Patel Engineering Co. Ltd. Vs. Commissioner for Workmen's Compensation Hyderabad 5 J FJR-1977-348).

Employer's liability to pay compensation to workman

Employer's liability *to* pay compensation *to* workman

If personal injury is caused to a workman by accident arising out of and in the course of, his employment, his employer shall be liable to pay compensation (Sec. 3(1).

The following conditions must concur in order that an employer may be held liable to pay compensation to a workman:

1) Some personal injury must have been caused to a workman.

2) Such injury must have resulted either in the death *of* the workman or in the total or partial disablement.

3) Such injury must have been caused by an accident.

4) Such accident must have arisen out of the workman employment and

5) Such accident must have arisen in the course of the employment *of* workman.

Mere death in ordinary course by some bodily ailment even in the course of employment cannot attract liability of the employer. The words 'injury' and 'accident' in section 3 of the Act imply the existence of some external factor to cause death apart from internal deceased employee could not have directly or indirectly contributed to the injury nor was it shown that the employee had to undergo any special strain on the fatal day it cannot be inferred that there was casual connection between the employment and the injury just because the workman died during office hours. Some casual connection between the employment and the injury, independent of the bodily ailment must be shown for invoking section 3 of the Act (Municipal Corporation for Greater Bombay Vs. Sulochanabai Sadashiv Joil (52-FJR-1978-360).

In Budheli Jena Vs. Deulbera Colliery, National Coal Development Corporation Ltd. (49 FJR-1976-414), it was held that in order to get compensation under the Act it must be shown that there was some proximate or at lest fundamental connection between the accident and the employment and if the primary casual connection between the accident and the employment is absent, no liability can be foisted on the employer.

The words 'in the course of employment, mean, "in the course of the work which the workman is employed to do and which is incidental to it". The words' arising out of employment' are understood to mean that" during the course of the employment", injury has resulted from some risk incidental of the duties of the service which unless engaged in the duty owing to thê master, it is reasonable to believe the workman would not otherwise have suffered'. In other words, there must be a casual relationship between the accident and the employment. The expression 'arising out of employment' is again not confined to the mere nature of the employment. The expression applies to employment as such, to its nature its conditions, its obligations and its incidents; If by reason of any of those factors the injury would be one which arises out employment.

(Mackinnon Mackenzie and Co. Pvt. Ltd. Vs. Ibrahim Mohammed Issak (AIR - 1970-SC-1906).

DOCTRINE OF CONTRIBUTORY NEGLIGENCE

'Contributory negligence' means that the employer raises the defences that the accident has occurred purely due to the negligence on the part of the employee. Such a defence has been given no footing under the Act. The main purpose is to safeguard the workers and not to deprive them of their rightful claim under the Act otherwise every employer would escape the claim by raising the defence of contributory negligence.

In Badma Devi Vs. Raghunath Roy (AIR 1950 Orissa 20), the defence of "contributory negligence" was given no footing. No amount of negligence in doing an employment job can change the workman's action into a non-employment job and contributory negligence is no defence. In another case also Sunderdasa Mudaliar Vs. Muthiammal (1956-11-LLJ 52), it has been held that doctrine of contributory negligence has no place without the Act. In Urmila Desai and Another Vs. Tata Iron & Steel Co. Ltd (AIR 1928 Patna 528) it was held that a workman would not lose his right to compensation only by reason of the fact that he had acted thought lessly or foolishly.

Doctrine of added peril

The principle of added peril has been dealt within Bharangya Coal Co. (Ltd) Vs. Sabeb Jan Main and another (TCR 1956 Labour 128). In this case, the principle of added peril was laid down as under:

" The principle of added peril contemplates that if a workman while doing his master's work undertakes to do something which he is not ordinarily called upon to do and which involves extra danger, he cannot held his master liable for the risks arising therefrom. This doctrine therefore comes into pay only when the workman is at the time of meeting the accident performing his duty"

Personal Injury: Sec. 3(1)

Personal injury caused by accident arising out of and in the course of employment means contracting occupations disease peculiar to that employment.

Personal injury is not necessarily confined to physical bodily injury. If an occurrence is unexpected and without design on the part of workman, it is an accident (Jankiarnmal Vs. Divisional Engineer, Highway Kozhikod -2 MLJ-19).

Difference between 'Accident & Injury'

Accident means untoward mishap which is not expected or designed by workman. Injury means physiological injury. Accident happens externally to man However, there accident may be an event happening internally to a man, accident and injury may then coincide (Smt. Sunderbai Vs. The General Manager, Ordinance Factory, Khamaria Jabalpur 1956-LAB LC 1163(M.P).

In Smt. A. Seetharamrnamrna Vs. General Manager, Sough Eastern Railway (47F J C-19] 5-468) it was held that there need not by any viable external injury on the deceased if the death was due to heart failure. Any Physiological injury causing he rupture of he deceased's veins, which results in his heart failure is sufficient to bring it within the expression personal injury.

When a factor like disease, infirmity or old age exists, such pre-existing factor would not necessarily rule out the possibility of death having been accelerated by even ordinary strain and the crux of the matter in .such cases would be whether the deceased had worked at the relevant time on a job which would cause some strain that would accelerate his death in view of the pre-existing factor (Bhagwanji Murubhai Sodha and others Vs. Hindustan Tiles and Cement Industries (50-FJR -1977-97).

In Pratap Narain Singh Deo Vs. Srinivas Sabata and Another (1975 - 48- FJR296), it was held that under sub-section (1) of section 3 of the Act the compensation has to be paid as soon as the personal injury was caused to the concerned workman. The levy of penalty would be justified where the employer did not pay the compensation at the rate provided in. section 4 as the personal injury was caused to the employee and did not even make a provisional payment under sub-section (2) of section 4.

If there is a casual and proximate connection between the accident and the employment, the personal injury shall arise on of and in the course of employment of the deceased workman (Natima Bibi Vs. Lodhne Collierty C. (1970) Ltd 50 FJR 1977 242) where workman is not required to discharge his duties on the fatal day he does not suffer the injury in course of his employment, (Executive Engineer, Rajasthan Canal Project Vs. Smt. Veera 47-FJR-1975-397). If the workman does as a natural result of the disease from which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of his employment, no liability would be

fixed upon the employer (Mackimon Mackenzie & Co P. Ltd. Vs. Smt. Ritta Fernandes 1962 (2) LLJ - 812).

Injury arising out of and in the course of employment

A person is in the course of his employment as soon as he reaches the particular point of area of only about 10-15 feet of the entrance gate because it is only the incident of employment which brings him into the danger zone. The employer becomes liable to pay compensations to the dependents of the deceased workman where both the conditions (in the course of employment and 'arising out of employment') laid down in Section 3(1) the Act are fulfilled. Dubbien Dharamshi and others Vs. Jeheangir Vakil Mills Co. Ltd. Bhawanagar -50-FJR-1977-207).

Workmen are in the course of employment if they meet with fatal accident while they travel to their work spot in the principal employer's lorry (Patel Engineering Co. Ltd. Vs. Commissioner for Workmen's Compensation, Hyderabad 51 FJR 1977348)

In one of the leading cases on the subject, a boy returning to the factory canteen after having served tea in his usual round to certain persons in the factory premisses was struck by a bullet and he died the following day. It was held that death of the boy was due to accident arising out of and in the course of his employment.

The bonus of proving that the accident arose in the course of employment is upon the workman. In Prakash Chandra Gangully Vs. Jawahir Prem (10 LLJ 159), where a workman leaves an employer and he alleges that he contacted disease under employer of his previous master, it has been held that burden of proof is upon the workman. However, if a worker wilfully disobeys a rule he is not entitled to compensation.

In Laxmibai A. Karangatkar Vs. The Chairman and -Trustees, Bombay Port Trust (55 BLR 924). Bombay High Court has held that where as 'the course of the employment' emphasises there must be a casual connection between the employment and the accidental injury. The Bombay High Court has in Trustees of the Port of Bombay Vs. Yamunabai (54 BLR 421) held that the words arising out of his employment' were wide enough so as to over a case, where there may not be necessarily be a direct connection between the injury caused as a result of an accident and the employment of the workmen concerned. In Laxmibai's case, the Court held that if the employment is a contributory cause, or if the employment has accelerated the death, or if it could be said that the death was not only due to the disease but the disease coupled with the employment then the employer would be liable and it could be said that death arose out of the employment to the deceased workman.

Injury by Accident - Occupational Disease : Sec. 3(2)

In the following cases the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

1) If a workman employed in any employment specified in A part of Schedule III Contracts any disease specified therein as an occupational disease peculiar to that employment; or

2) if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than 6 months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in part B of schedule III, contracts any disease therein as an occupational disease peculiar to that employment; or

3) if a workman whilst in the service of one or more employers in any employment specified in part C of schedule III for such continuous period a the central Government, may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment; or

4) if it is proved that a workman whilst in the service of one or more employees in whose service he has been employed for a continuous period which is less than 6 months, in any employment specified in part C of schedule III has contracted a disease spiced therein as on occupational disease peculiar to that employment.

5) if it is proved that the disease has arisen out of and in the course of the employment; be the contracting of such disease shall be deemed to be an injury by accident;

6) if it is proved that a workman who;

(a) having served under any employment specified in part B of schedule III; or,

(b) having served under one or more employers in any employment specified in part C of that Schedule.

(i) for a continuous period of 6 months for that employment and has after the cessation of such service- contracted any disease specified in the said part B or the said part C, as the case may be as occupational disease peculiar to the employment and that;

(ii) such disease arose out of the employment; then the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

In Laximbai Atma Ram Vs. Bombay Port Trust (AIR 1954 Bom 180) it has been held that where a workman suffers from heart disease and dies on account of strain of work by keeping continuously standing or walking the accident has arisen out of employment. It is not only that while working in the factory premises or at the job that accident will be deemed to arise in the course of his employment. The workman while returning from his duty was crushed by an engine, it was held that he met with an accident in the course of his employment.

If an occurrence is unexpected and without design on the part of workman, it is an accident. The facts and circumstances of each case shall have to be examined very carefully.

Theory of notional extension of employment

To make the employer liable it is necessary that the injury caused by an accident must have arisen in the course of employment. It means that the accident must take place at a time and place when each was doing master's job.

'It is well settled that the concept of "duty" is not limited to the period of time the workman actually commenced his work and the time he downs his tools. It extends further in point of time as well as place. But there must be nexus between the time and place of the accident and the employment. If the presence of the workman concerned at the particular point was so related to the employment as to lead to the conclusion that he was acting within the scope of employment that would be sufficient to deem the accident as having occurred in the course of employment that would be sufficient to deem the accident as having occurred in the course of employment; Wever Vs. Tradegar Iron and Coal Co. Ltd. (1940) All 3 ER 15).

It is known as doctrine of notional extension of employment: whether employment extends to the extent of accident depends upon each individual case.

In the case of Works Manager, Carriage and Wagon shop E/R Vs. Mahabir the Work shop was situated at about a mile from the railway station. The workman used to come from a nearly town and travel by the workman's special train provided by the railways. The worker usually reach the factory after crossing the railway lines in preference to the alternative sub way and over-bridge routes. A Workman after finishing his duty wile returning to railway station to catch the rain was crossing railway lines, that he was runover by shunting engine and received injures. Held employer was liable.

In another case, the workman suffered injury by capsizing of the lorry belonging to the employer and driven by his driver when the lorry was carrying the workmen to the place of work, it was held where the kind of transport provided by the employer was the only mean available to workmen, the accident was held to be in the course of employment because only the lorry provided by the employer was the most reasonal and feasible means or transport but also that there was not other means of conveyance on and from the workshop being hilty tract: Varadarajula Vs. Massaya Boyan AIR 1954 Mad 1113.

In Saurashtra Salt Mfg. Co. Vs. Bai Velu Raja AIR 1958 a workman was drowned while returning home from salt works on a public ferry boat. Held, that on the facts of the case the accident could not be said to have arisen out of and in the course of employment while crossing the creek in as much as the theory, of notional extension

could not extend to the point where the boat capsized. Thus, where accident occurs on a public road while going the place of employment, the employer not liable. Here Proximity of place is not relevant (AIR,1961 Cal. 310).

In another case of BEST Undertaking Bombay Vs. Mrs. Agnes, (AIR 1961 SC 193) the drivers of BEST undertaking were given free transport facility in buses belonging to the employer from depot to his house and vice-versa. A driver was injured in an accident with the bus to which he was travelling while going home from his depot. It was held that accident occurred during the course of employment and the employer liable for compensation. The Supreme Court observed that the question when employment begins and ends depends the facts of each case. Employment does not necessarily end when the 'tool down' signal given or when the workman leaves the workshop. It may begin when be used the means access and agrees to and from the place or employment. A contractual obligation to us only a particular means of transport extends the area of field of employment.

In the case of Dedhiben Dharamshi Vs. New Jehangir Vakil Mills Co. Ltd.; Bhavnagar, 1977, Lab IC.10), company has two separate gates for going and coming for convenient egress and ingress of employee. An employee who was standing outside the gate just five minutes before the start of his shift was knocked down by a cyclist and died. It was held the it is obvious that there was sufficient proximity both in time and place with his employment The place clearly come within the theory of notional extension because of the sufficient proximity both in time and place when he was obtaining access through the specified gate. The enter gate and the timings had been specified by the employer and it was only at ordinary incident of his employment that he had at that fatal hour to come to that fatal place.

A workman while returning home after duty was murdered within the premises of the employer. It was held that there was casual and proximate connection between the accident and the employment. Since the workman was on spot for his employment and his wife is entitled for compensation: Naima Bibi Vs. Lodlme Colliery (1920) Ltd, 1977 Lab: LC, (NOC) 14).

When the workmen loses compensation - Defences to an employer Sec. 3 (1) Proviso (4) & (5)

The employer shall not be liable to pay compensation to a workman under the following circumstances:

1) Where the injury does not result in the total or partial disablement of the workman for a period exceeding 3 days.

i) the workman having been at the time there of under the influence of drink or drugs; or

ii) the willful disobedience of the workman to an order expressly given to a rule expressly framed, for the purpose of securing the safety of work man, or

iii) the willful disobedience of the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

3) that the accident which caused injury arose outside the scope of employment and did not arise out of and in the course of employment of workman;

4) that an order or rule was in fact already in force at the time when the accident happened;

5) that the substantial purpose of the rule or order was that of securing the safety of workman as such;

6) that the order or the rule was couched in words which on their face fairly and clearly indicated that purpose;

7) that its terms and were brought to the notice of particular workman who was the individual injured in a case;

8) that disobedience of the rule or order was willful and deliberated and not only the result of mere negligence or due to a mistaken mode of doing a particular task or due to a wrong decision in an emergency;

9) that the accident was directly attributed to the aforesaid disobedience;

10) where a workman while doing his master's work under takes to do something which he is not ordinarily called upon to do and which involves extra danger;

11) in respect of any disease, which is not directly attributable to a specific injury by accident arising out of and in the course of his employment (Sec.3(4).

12) in respect of any injury, if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person. (Sec. 3(5).

It should be not that no suit for damages shall be maintainable by a workman in any Court of Law in respect of any injury.

i) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

ii) if an agreement has been entered into between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of the Act. (Sec. 3(5).

It will therefore be observed that a workman can elect to avail himself of any other remedy other than provided by the Act but he cannot have double payments and employer is protected from double proceedings.

It should however be noted that the workman's dependents are not debarred from instituting suit in civil *of* a claim filed before the commissioner has been withdrawn before the commencement of he proceedings. (S. Sippiah Chettiar Vs. Chinnathura and others AIR-1957-Mad-216).

Employers Liability when contractor is engaged (Section 12)

i) sometimes, employer may engage a contractor instead of employing his own workman for the purpose of doing any work in respect of his trade or business. Such a contractor then executes the work with the help of workman engaged by him. If any injury is caused by an accident to any of these workers, the employer cannot be held liable because they are not employed by him and hence are not workmen. But now Section 12 (1) makes the employer liable for compensation to such workman hired by the contractor under following circumstances:

(a) The contractor is engaged to do a work which is part *of* the trade or business of the employer (called principal).

(b) The workmen were engaged in the course of or *for* the purpose of his trade or business.

(c) The accident occurred in or about the premises on which the principal employer has undertaken or unundertaken or execute the work concerned. The amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

ii) According to Section 12(2), where the principal is liable for pay compensation under this section, he shall be entitled to be indemnified by the contractor or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnity a principal under this section, he shall be entitled to be indemnified by any person standing to him in relation of a contractor from whom the workman could have recovered compensation and all question as the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

iii) The above provision, however, does not prevent a workman from recovering compensation from the contractor instead of the employer, i.e., the principal; Section 12 (3).

iv) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be to execute the work or otherwise under his control *or* management; Section 12(4).

Following illustrative case will further clarify the law laid down in Section 12.

a) A Municipal Board entrusted the electrusted the electrification work of the town to State employees. A workman received injuries while performing his work. Held, it is the State and not the Board, liable to pay compensation because execution of electrical project is not the ordinary business of the Municipal Board (AIR 1960 All 408).

(b) A conductor was entrusted with the repairs of a defective chimney. A workman engaged by him was injured while carrying out repairs. Helled mill was not liable for compensation as the repairing chimney is not the part of company's trade or business, whether ordinarily or extraordinarily,

(c) A cartman was engaged by a Rice Mill to carry rice bags from mill to railway station. The cartman met with an accident on a public road while returning back from railway station and this resulted in his death. There was no evidence to show that workman was engaged through conductor. In a suit for compensation against the mill owner was observed that Section 12 is not applicable where accident arise out of and in the course of employment of conductor engaged by the employer the liability of the owner was clear from Section 12 (1) and it had not been excluded by reason of Section 12(4).

Remedies of Employer against Stranger Section (13)

Section 13 of Act provides that where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid, to pay damages in respect there of, the person by whom the compensation was paid any person who has been called on to pay an indemnity under Section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

Time of Payment - Compensation: (Sec.4A)

As a regard rule compensation under Section 4 shall be paid as soon as it falls due.

In cases where the employer does not accept the liability for compensation to the extent climbed, he shall be bound to make provisional payment based on the extent of liability which he accepts and such payments shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

Penalty: Where any employer is in default paying the compensation due under this Act within one month from the date it becomes due, the commissioner may direct that in addition to the amount of the arrears simple interest at the rate of 6 percent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding 50 percent of such amount shall be recovered from the employer by way of penalty.

Calculation of Wages (Sec. 5)

The expression' Monthly Wages' under the Act means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates) and is calculated as follows:

(a) where a workman has during a continuous period of not less than 12 months immediately preceding the accident been in the service of the employer who is liable to pay compensation the monthly wages of the workman shall be 1/ 12th of the total wages which have fallen due for the payment to him by the employer in the last 12 months of that period.

(b) where the whole of the continuous period of service immediately preceding the accident during which the workmen was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wage of the workman shall be the average monthly amount which during 12 months immediately preceding the accident, was being earned by a workman so employed, or if there was no workman so employed, by a workman employed on similar work in the same locality.

(c) in other cases including cases in which it is not possible for want of necessary information to calculate the monthly wages under Clause (b) above the monthly wages shall be 30 times the total wages earned in respect of the list continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

A period of service shall be deemed to be continuous which has not been interrupted by a period of absence from work exceeding 14 days i.e.. no period of the sense shall exceed 14 days.

Power to add to schedules: Sec. 3(3)

The State Government in the case of employment specified in part A and part B of Schedule, III, and the Central Government in the case of employment's specifies in part C of the Schedule, after giving by notification in the Official Gazette, not less than 3 month's notice of its intention so to do, may, by a like notification add any description of employment to the employments specified in Schedule III and shall be deemed for the purposes of this section to be occupational diseases peculiar those employment respectively. There upon the provisions relating to occupational disease shall apply as if diseases had been declared by this Act, to be occupational diseases peculiar to those employments.

Review of half monthly payment (Sec. 6)

Any half monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the commissioner, or the application either of the employer or of the workman accompanied

by the certificate of a qualified medical practitioner; or on an application made with out such certificate subject to rules made under this Act that there has been a change in the condition of the workman.

Under Rule 3 of the Workman's Compensation Rules, an application for review can be made without a medical certificate in the following cases:

a) by the employer, on the ground that since the right to compensation was determined, the workman's wages have increased.

b) by the workman, on the ground that since the right to compensation was determined his wages have diminished;

c) by the workman, on the ground that employer having commenced to pay compensation, has ceased to pay the same, not withstanding the fact that then~ has been no change in the workman's condition such as to warrant such cessation;

d) either by the employer or by the workman, on the ground that the determination of the rate of compensation for the time being in force was obtained by fraud or undue influence or other improper means;

e) either by the employer or by the workman on the ground that in the determination of compensation there is a mistake or error apparent on the face of the record.

Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lumpsum to which the workman is entitled less any amount he has already recovered by way or half monthly payments.

Commutation of half-monthly payments (Sec.7)

Any right to receive half-monthly payments may, by agreement between the parties, or if the parties cannot agree and the payments have been continued for not less than 6 months, on the application of either party to the commissioner be redeemed by the payment of a lumpsum of such amount as may be agreed to by the parties or determined by the Commissioner as the case may be.

When such an application for communication of half-monthly payments is made to the Commissioner, he shall estimate the probable duration of the disablement and shall determine the lump sum payable on the basis of half-monthly payments which will have to be paid during the estimated period. (Rule 5 of the Workmen's Compensation Rules).

Distribution of Compensation (Sec. 8)

Compensation payable in respect of a workman whose injury has resulted in death, and compensation payable as a lump sum to a woman or a person under a legal disability,

shall be made by depositing with the Commissioner.' No such compensation shall be paid to a workman or a person under a legal disability directed by an employer to the workman. Any such payment made directly by an employer shall not be deemed to be a payment of compensation.

However, in case of deceased workmen, an employer may make to any dependent advances on account or compensation not exceeding an aggregate of Rs. 100 so much of such aggregate as does not exceed the compensation payable to that dependent shall be deducted by the commissioner from such compensation and repaid to the employer. Any other sum amounting to not less than Rs. 10/- which is payable as person entitled thereto. The receipt of the commissioner shall be sufficient discharge in respect of any compensation deposited with him.

Disbursements by Commissioner in case of a deceased workman.

On the deposit of nay money as compensation in respect of a deceased workman, the commissioner shall deduct there from the actual cost of the workman's funeral expenses, to in amount not exceeding Rs. 50/- any pay the same to the person by whom such expenses were incurred.

The commissioner shall, if he thinks necessary, cause notice to be published or to served on each dependent in such manner as he thinks fit calling upon the dependents to appear before him on such date as he may fix for determining the distribution of the compensation. If the commissioner is satisfied after any inquiry which he may deem necessary, that no dependent exists, he shall repay the balance of the money to the employer by whom it was paid. The commissioner shall, on application by the employer furnish a statement showing in detail all disbursements made.

Compensation deposited in respect of a deceased workman shall, subject to any deduction made as stated above, be apportioned among the dependents of the deceased workmen or any of them in such proportion as the commissioner thinks fit, or may, in the commissioner, be allotted to anyone dependant.

Where any compensation deposited with the commissioner is payable to any person, the commissioner shall pay the money to the person entitled thereto except in the cases where the compensation is payable to woman or a person under a legal disability.

Disbursement by commissioner in case of compensation payable to a woman or person under a legal disability.

Where any lump sum deposited with the commissioner is payable to a woman or a person under a legal disability such sum may be invested, applied or otherwise death with for the benefit of the woman or of such person during his disability, in such manner as the commissioner may direct.

Where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on the application made to him in this behalf, order that the payment be made during the disability to any dependent of the workman or to any other person, whom the Commissioner thinks best fitted to provide for the welfare of the workman.

Variation of the Order

Where on an application made to the Commissioner in this behalf or otherwise, the Commissioner is satisfied that on account of neglect of children on the part of parent or on account of the variation of the circumstances of any dependent or for any other sufficient cause, an order to the Commissioner as to the distribution of any sum paid as compensation or as to the commissioner may make such orders for the valuation of the former order as he things just in the circumstances of the case.

However, no such order prejudicial to any person shall be made unless such persons has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

Where the Commissioners varies any order by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, and amount so paid to or on behalf of such person may be recovery as an arrear of land revenue.

Compensation not to be assigned, attached or charged (Sec.9)

No lump sum or half monthly payment payable under this Act shall in any way be capable of being assigned or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

Claim for compensation: (Sec. 10(1)

Claim for compensation shall be entertained by a commissioner only when

(i) notice of the accident has been given in the manner provided as soon as practicable after the happening thereof, and

(ii) the claim preferred before him within 2 years of the occurrence of the accident; or

(iii) in case of death, with 2 years from the date of death.

A claim application for compensation under the Act signed by a non-dependent major son instead of the widow of the deceased as required is only a procedural defect which would not affect the validity of the claims (Bhagwanji Murubhai Sodha and others Vs. Hindustan Tiles and Cement Industries (50 FJR -19/7-97).

A commissioner has incidental power to allow an amendment of the original claim petition tiled under section 10 of the Act within the period of limitation (Kanwaljit Singh Vs. Khuranna Shuttle Manufacturing Co. (53 FJR- 1978-11)

Computation of the Period

In case where the accident is due to the contracting of a disease, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease.

In case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work, the period of 2 years shall be counted from the day workman give notice of the disablement to his employer.

If a workman who having been employed in an employment for a continuous period, ceases to be so employed and develops symptoms of an occupation disease peculiar to that employment within 2 years of the cessation of employment, accident shall be deemed to have occurred on the day on which the symptoms were first detected.

However, the Commissioner may entertain and decide any claim to compensation in any case, though the notice has not been given or the claim has not been preferred in due time as stated above, if he is satisfied that the failure so to give the notice or prefer the claim as the case may be was due to sufficient cause Obligations and Responsibility of Employer.

i) To submit statement of fatal accidents (Section 10A)

a) Where a commissioner receives information form any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit, with in the prescribed form giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

b) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

c) If the employer is of opinion that he is liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

d) Where the employer has to disclaimed liability, the commissioner, after such inquiry as he may inform any of the dependents of the dependents of the deceased workmen, that it is open to the dependents to prefer a claim for compensation and may give them further information as he may think fit.

ii) To submit report of fatal accident and serious bodily injuries (Sec. 10 B)

a) Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring in his premises which results in death or serious bodily injury, the person required to give the notice shall, within seven days of the death or serious bodily injury, send a report to the Commissioner giving the circumstances attending the death or serious bodily injury. "Serious bodily injury" means an injury which involves or in all probability will involve, permanent loss of the use of permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb, or the enforced absence of the injured person from work for a period exceeding twenty days (Expl to section 10 B(1).

b) The state Government may, by notification in the Official Gazette, extent le provisions of Sub Section (J) to any class of premises other than those coming within the scope of the sub section, any may, by such notification specify the persons who shall send the report to the Commissioner.

c) Nothing in this section shall apply to the factories to which the Employees State Insurance Act, 1948 (34 of 1948) apply. Notice and Claim (Section 10).

(a) No claim for compensation shall be entertained by a Commissioner unless the notice of the accident has been given in the manner hereinafter provided as soon as practical after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the occurrence of the accident or, in case or death, within two Provided that

(i) Where the accident is the contracting of a disease the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease;

(ii) in case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work, the period of two years shall be counted from the day the workman gives notice of the disablement to his employer.

(iii) if a workman who, having been employed in an employment for a continuous period specified under Section 3(2) in respect of that employment ceases to be so employed and develops symptoms' of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day not which the symptoms were first detected.

(iv) the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim.

(a) if the claim is preferred in respect of the death of a work man resulting from an accident which occurred in the premises of the employer, or at any place where the workman at the time of the accident was working under the control or of

any person employed by him and the workman died on such premises, or at such place, or any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurs, or

(b) if the employer or anyone of several employers or any persons responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed had knowledge of the accident from any other source at or about the time when it occurred.

(v) the Commissioner may entertain and decide any claim to compensation in any case not withstanding that the notice has not been given, the or claim, has not been preferred in this subsection, if he is satisfied that the failure to give the notice or prefer the claim, as the case may be, was due to sufficient cause. Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date in on which the accident happened and shall be served on the employer or upon anyone of several employers, or upon any person responsible to the employer for he management of any branch of the trade or business in which the injured workman was employed.

The State Government may required that any prescribed class of employers shall maintain their premises as which workmen are employed a notice-book in the prescribed from, which shall be readily accessible at all reasonable times to any injured workman employed ion the premises and to any person acting bonafide on his behalf.

A notice under this section may be served by delivering it at, or sending it by registered post addressed to the residence, or any office or place of business of the person on whom it is to be served or, where a notice book is maintained by entry in the notice book.

Medical Examination

A workman who is injured and has given notice of accident to the employer is to submit himself or medical examination if offered by employer. Any such offer made by the employer must be free of charge and is to be made within 3 days from the date of receipt of notice of accident. The purpose of medical examination is to prevent a dishonest worker having an opportunity of cancelling the nature of injury from any impartial observer. But the certificate or evidence given by the employer's doctor cannot, however, be considered conclusive. In respect of such medical examination, Government has framed rules and the employer has to observe those rules and cannot go beyond those rules. The rules lay down that if the injured workmen is present on premises, the workman must immediately submit himself to such examination. In other case the employer has to send the medical practitioner to the place where the workmen is residing for the time being and the workman has to submit to a medical examination when required by the medical practitioner. The employer may also inform the workman in writing that

the medical examination would take place in the vicinity as specified in the intimation. In the cases the workman must submit himself for examination at the time and place specified in he intimation. In cases where the condition of the injured workman is such as to make it impossible or inadvisable for the workman to leave the place where he is, he has to be examined at the place of his residence. Similarly a workman who is securing monthly payments may be required to submit to medical examination. In his case medical examination has to be held at the place where he is residing. He can be examined twice in the first month following the accident and once in any subsequent month. The Commissioner may also require an injured workman to submit to medical examination.

Provision for examination Females

A female can be examined by a medical practitioner only in the presence of some other women unless the female worker consents otherwise. A female worker can insist on being examined by a female medical practitioner but in that case the female worker will have on deposit a sum sufficient to cover the expenses of an Examination by a female practitioner.

Consequences of non-submission to medical examination

If a workman refused to submit himself to medical examination or in any way obstructs such examination, his right to compensation is suspended during the period of such refusal or obstruction. In the case of refusal, however, this result will not follow if the workman, establishes that he was prevented from submitting himself to medical examination on account of sufficient cause. The right of a workman to receive compensation is also suspended if the workman, who has been asked by his employer to submit to medical examination within 3 days from the receipt of notice of accident voluntarily leaves the place without having been so examined. In such case the suspension, shall continue till the workman concerned returns and submits to medical examination. Such medical examination has to take place within 72 hours after the workman has offered himself for examination.

Moreover, in cases where a workman's right to compensation is suspended the employer will not liable to pay compensation for the period during which the suspension continued. If the period of suspension commences before the expiry of waiting period of 3 days, the waiting period will be increased by the period during which the suspension continued.

If the workman, whose right to compensation is suspended dies without submitting to medical examination, the Commissioner has been given the discretion to direct payment of compensation to the dependents of deceases workmen in fit cases.

The aggravation of any injury suffered by a workman is not to be taken into consideration in the assessment of compensation in the following cases:

i) where an injured workman has refused to be attended by a qualified medical practitioner whose service have been offered to him by the employer free of charge; or

ii) 'Where the injured workman has deliberately disregarded the instructions given by the qualified medical practitioner.

Provided it is proved hat such refusal, disregard of failure a unreasonable under the circumstances of the case.

In such case compensation would be paid fork injury caused by accident of the original stage and any aggravation would be ignored.

Preference: (Sec. 19)

If any of the following question arises in any proceedings under this Act, then in default of agreement, it shall be settled by a Commissioner.

i) liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman); or

ii) as to the amount or duration of compensation including any question, as to the nature or extend of disablement).

No Civil Court shall have jurisdiction to settle, decide or dealt with any question, or enforce any liability incurred, which is required to be settled, decided, or dealt with by the Commissioner.

In Pratap Narayan Singh, Deo Vs. Srinivas Satata (1969-48-FIR-396), it was held that it cannot be contended that compensation does not fall due until it was settled by the Commissioner and that therefore on penalty can be levied for non-payment of the compensation before such settlement.

Venue of proceedings (Sec. 21)

Where any matter under this Act is to by or before a Commissioner, the same subject to the provision of this Act and to any rules made thereunder, be done by or before a Commissioner for the area in which the accident took place, which resulted in the injury.

In case, where the workman is a master of a ship or a seaman, any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship resides or carries on business.

Appointment, Powers and Duties of the Commissioner

Appointment Commissioners has been defined under sub-clause (B) of subsection (1) of section 2 of the At as a Commissioner for workmen's Compensation appointed under Section 20.

The State Government may, by notification in the Official Gazette, appoint any person to be the Commissioner for Workmen's compensation for such area as may be specified in the notification. Where more that one Commissioner has been appointed any area the State Governments may be general or special order, regulate the distribution of business between them.

Any Commissioner may for the purpose of deciding any matter referred to him for decision under this Act; chose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.

Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Powers and Duties: The Act gives wide powers to the Commissioner under the Act. The following powers may be noted:

1) Distribution of compensation.

2) Power to required from employers statement regarding fatal accidents (Sec. 10A)

3) Power of Settlement of dispute (Sec. 19(1)

4) Power of transfer (Sec.21(2)

5) Power of Commissioner to require further deposit in cases of fatal accident (Sec. 22A)

6) Powers of Civil Court (Sec. 23). The Commissioner shall have all the powers of a Civil Court under the Code of Civil procedure 1908, for the purpose of

i) taking evidence on oath;

ii) enforcing the attendance of witnesses; and iii) enforcing he production of documents and material objects.

The Commissioner shall be deemed to be a Civil Court for all the purposes of Section 195 and of Chapter XXXV of the code of Criminal procedure, 1898.

7) Power to order costs (Sec. 26)

8) Power to submit cases (Sec. 23).

9) Power to with hold certain payment pending decision of an appeal; (Sec.. 30A)

10) Power of recovery; (Sec. 31)

11) Duty to record evidence (Sec. 25)

Transfer of proceedings: (Sec. 21)

It was observed above that one of the powers of the Commissioner is to transfer

the proceedings. As stated, if the Commissioner is satisfied that any matter arising out of any proceedings pending before him can be more conveniently dealt with by any Commissioner, whether in the same State or not, he may, subject to rules under this Act or such matter to be transferred to such other Commissioner either for report or for disposal the Commissioner shall also transmit in the prescribed manner any ;money remaining in his hands or invest by him for the benefit of any party to the proceedings, has appeared before him, make any order of transfer relating to the distribution among dependents of a lumpsum without giving such party an opportunity of being heard.

Further, no matter other than a meter relating to the actual payment to a workman or the distribution among dependents of a lumpsum shall be transferred for disposal to a Commissioner in the same state without the previous sanction of the State Government or to a Commissioner in another State without the previous sanction of the State Government of that State, all the parties to the proceedings agree to the transfer.

The Commissioner to whom any matter is so transferred shall subject to rules made under this Act, inquire there to and if the matter was transferred for report, return his report there on or, if the matter was transferred for dispcsal continue the proceedings a if they had originally commenced before him.

On receipt of a report from a Commissioner to whom any matter has been transferred for report, the Commissioner by whom it was referred shall decide the matter in conformity with such report. The State Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.

Appearance of Parties: (Sec. 24)

Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purposes of his examination as a witness, may be made or done on behalf of such person by)

i) a legal practitioner; or ii) by an official of an Insurance Company or registered Trade Union; or

iii) by an Inspector appointed under sub section (1) of section 8 of the Factories Act, 1948, or under sub-section (1) of Section 5 of the Mines Act, 1952; or

iv) by any other officer specified by the State Government in this behalf, authorised in writing by such person; or

v) with the permission of the Commissioner by any other person so authorised.

It should be noted that none of the above persons shall be authorised to appear on behalf of any person, where an appearance of a party is required in person, for the purpose of his examination as a witness.

Appeal: (Sec.20)

An Appeal shall lie to the High Court. It shall be lie from the following orders of the Commissioner namely;

i) an order awarding compensation of lumpsum whether by way of redemption of a half monthly payment or other wise or disallowing a claim full or in part for a lump sum;

ii) an order awarding interest or penalty under Sec. 4A.

iii) an order refusing to allow redemption of a half- month payment;

iv) an order providing for the distribution of compensation among the dependents of a deceased workman, or disallowing any claim of a person alleging himself to be such dependent.

v) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of Section 12;

vi) an order refusing to register a memorandum of agreement or providing for the registration of the same subject to the conditions.

An appeal would lie against any of the above orders only if it involves a substantial question of law, Once the condition that the appeal much involve a substantial question of law was satisfied, the High Court was entitled to consider the whole case and for that purpose to review the evidence on record and to decide question of fact (Central Glass Industry Ltd., Vs. Abdul- Hossain (ILR 1958 (Cal.12).

In Bai Chandan and others Vs. Godhra Borough Municipality (46-FJR-1974-164), it was held that the, decision of the Commissioner under the Act though styled by the Act as an award is indeed a judgement not in any way different from the judgement of a Civil Court. In Chatiya Devi Gowalin and another Vs. Rub. Lal and another (33-FJA-1978-272) it was held that there is nothing in Clause (a) of sub section (1) of Section 30 (Clause (i) above, of the Act to restrict its application only to the employer and under appropriate circumstances, even an employee or his heirs, if aggrieved with the order awarding compensation,. can legitimately come up on appeal. On death of a workman in course of employment while performing his duties when compensation was awarded by the Commissioner and appeal was preferred in High Court, death of the respondent does not debar the dependants of the deceased workman to claim compensation money (Manager Sericulture Fisheries Vs. Mansaram and others -1976 LAB I. C. 957. Moreover the Act provides an appeal against an order disallowing a claim in full or in part for a lumpsum.

Circumstances in which no appeal shall lie

No Appeal shall lie

a) against any order, unless a substantial question of law is involved in the appeal.

b) in the cause of any order other than;

i) an order refusing to allow redemption of a half monthly payment; or

ii) where the amount in dispute in the appeal is less than Rs.300

c) in any case in which the parties have agreed to abide by the decision of the Commissioner; or in which the order of the Commissioner gives effect to an agreement reached to by the parties;

d) no appeal by an emplover against an order awarding a compensation a lumpsum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lumpsum; shall lie unless the memorandum of appeal is accompanied by a certificate by the commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against;

In Ramnivas Khandelwal and another Vs. Mt. Mariam (AIR-1951- Patna- 260) Patna High Court has held that such a certificate was no doubt a material document which the law enjoins to be filed in order that the appeal may be entertained, but it was doubtful whether merely because of the non-production of the certificate within the period of limitation the appeal would be barred.

e) no appeal shall lie after the period oflimitation for an appeal, i.e.. after the period of 60 days.

The provision of Section 5 of the Indian Limitations Act, 1908, shall be applicable to appeals under this section.

Power of the State Government to make rules (Sec.32&34)

The State Government may make rules to carry out the purpose of this Act. The power to make rules conferred by Section 32 shall be subject to the condition of the rules being made after previous publication.

The date of specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897, as that after which a draft of rules proposed to be made under section 32 will be taken into consideration, shall not be less than 3 months from the date of which the draft of the purposed rules was published for general information rules so made shall be published in the Official Gazette and on such publication shall have effect as if enacted in this Act.

Transfer of money paid as compensation to her country (Sec. 35)

The Central Government may, by notification in the official gazette, make rules for the transfer to any party of His Majesty's Domintons or to any other country, or money deposited with a Commissioner-under the Act which has been awarded to or

may be due to, any person residing or about to reside in such part of country, and, for the receipt distribution land administration in and State of any money deposited under the law relating to workmen's compensation in any part of His Majesty's compensation in any part of His Majesty's domintons or any other country which has been awarded to or may be due to any person residing or about to respect in any State. However, on sum deposited under this Act in respect of fatal accidents shall be so transferred without the consent of the employer concerned until the Commissioner receiving the sum has passed orders determining it distribution and appointment.

Where money deposited with a Commissioner has been so transferred in accordance with rules made under this section, the provisions regarding distribution of the money by the Commissioner deposited with him shall cease to apply in respect of any such money.

Rules made Central Government to be laid before Parliament (Sec. 36)

Every rule made under this Act by the Central Government shall be laid no sooner it is made before each House of parliament while it is in session for a total period of 30 days which may be comprised in one session or in two or more successive sessions, before the expiry of the session immediately following the session or the successive session aforesaid, both House agree in making any modification in the rule or both House agree in Making any modification in the rule or both House agree that the rule should not be made shall thereafter have effect only in such modified form or be of on effect, as the case may be. Any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Suggested Questions

1) Explain how the Workmen's Compensation Act has advanced the cause of social security in India.

2) Explain the minimum conditions necessary for claiming compensation in cases of industrial injuries under the Workmen's Compensation Act.

3) How the theory of Notional extension of time and place of employment enlarged the scope of compensation under the Workmen's compensation Act?

4) Enumerate the provisions of the Workmen's Compensation Act relating to distribution of compensation?

(B). THE EMPLOYEES STATE INSURANCE ACT. 1948

Object and Scope

The Employees State Insurance Act is a Social Security and Welfare Legislation. This Act provides for certain benefits to employees in case of sickness, maternity and

employment injury and to make Provision for certain other matters in relation thereto. The Act extends to the whole of India. The Central Government is empowered to enforce the different provisions of the Act in different states or parts thereof, on such different dates as may be notified by it (Sec. 1(3). The Act initially was applicable to factories (exclusing seasonal factories, mines, Railway Running Sheds) with 20 or more employees and using power in the manufacturing process. The act is now extended to the following establishments.

1) Small Power Factories with 10 or more persons employed for wages on any day of the preceding 12 months.

2) Non-Power Factories with 20 or more persons employed for wages on any day of the preceding 12 months.

3) Hotels and Restaurant wherein 20 or more persons are employed on any day of the preceding 12 months.

4) Shops wherein 20 or more persons employed for wage on any day of the preceding 12 months.

5) Cinemas including theatre

6) Motor Transport undertakings

7) News Paper establishments as defined under Section 2(d) of Working Journalist (Conditions of Service) and miscellaneous Provisions Act 1955.

In Tamilnadu, the extension of the scheme to this new Sectors has been effected from 16.01.1977 in Madras city and its suburbs. Coimbatore City and its suburbs and Madurai City and its Suburbs in the first instance. The appropriate Government may extend the provisions of the Act to any other establishment or class of establishments, Industrial cum Agricultural or otherwise. This can be done in consultation with ESI corporation by the appropriate government and where appropriate government is a State Government with the approval of the Central government after giving 6 months notice of its intention of so doing by notification in the Official Gazettes (Section 1(5)).

The Constitutional Validity of Sec.1(3) was challenged in number of cases. The Supreme Court in Basant Kumar Sarkar and others Vs. Eagle Rolling Mills Limited and others (1964,2LLI 105) held that the Section is an illustrative of conditional legislation and not one of delegated legislation and the Legislature leaves it to the government concerned to decide when, how in what manner the scheme of socio-economic welfare evolved by the Legislature in the Act should be introduced and that could not amount to excessive legislation. The Provisions of the Section 1 (3) neither violate Article 84 of the Constitution nor do they constitute excessive legislation. (K. C. Verma Vs. Employees State Insurance Corporation) AIR 1962, Assam 120).

Section 3 (1) authorises the Central Government to establish a Corporation for the Administration of the Scheme of the employees State Insurance by notification. When the notification should be issued and in respect of what factories it should be issued, have been left to the discretion of the Central Government and that is precisely what is usually done by conditional legislation. It is obvious that a scheme of this kind though very beneficial would not be introduced in the whole of the country all atonce. Such beneficial measures which need careful experimentation for some times to be adopted by stages and in different phases and so inevitable the question of extending the statutory benefits contemplated by the Act has to be left to the discretion of the appropriate Government. Hence, the Courts held that there is no excessive delegation.

Important Definitions

1) Benefit Period -Section 2(2)

Benefit period means such period being not exceeding 6 consecutive months corresponding to the contribution period as may be specified in the regulations provided that in the case of first benefit period of longer period may be specified by or under the regulations

2) Confinement means labour resulting in the issue of a living child or labour after 26 weeks of pregnancy resulting in the issue of a child whether alive or dead. (Sec. 2(3).

3) Contribution Period Section 2(5) - It refers to such period being not exceeding 6 consecutive months as may be specified in the regulation provided that in the case of first contribution period a longer period may be specified by under the regulations.

4) Dependant (Section 2(6A) means any of the following relatives of a deceased insured person.

(i) A widow, a minor legitimate or adopted son and unmarried legitimate or adopted daughter or a widowed mother

(ii) If wholly dependant on the earnings of the insured persons at the time of his death a legitimate or adopted son or daughter who has attained the age of 18 years and who is infirm.

(iii) If wholly or in part dependant on the earnings of the insured at the time of his death.

a) A parent other than a widowed mother.

b) A minor illegitimate son an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor.

c) A minor brother or an unmarried sister or a widowed sister if a minor.

d) A widowed daughter-in-law.

e) A minor child of pre-deceased son.

t) A minor child of a pre-deceased daughter where no parent of the child is alive or

g) A paternal grand parent, if no parent of the insured is alive.

5) Employment Injury: (Section 2(8) means a personal injury to an employee caused by Accident or an occupational disease arising out of and in the course of his employment being an insurable employment whether the accident occurs or occupational disease is contracted within or outside the territorial limits of India.

The phrase 'in the course of employment' does not exclude a happening which takes places outside both in time and place. The definition of employment injury is in this respect in parimateria with the corresponding provision in the Workmen's Compensation Act 1923. (Indian Rare Earths Ltd. Vs. Subida Beevi (1981-2LLJ-293). Injury need not be confined to visible injury in the shape of some wound or as otherwise it would be inconsistent with the purpose of the Act. Hence, it is well settled that employment injury need not necessarily be confined to any injury sustained by person within the premises of the concern where a person works. Whether in a particular case the theory of notional extension of employment would take in the time and place of accident so as to bring it with an employment injury will have to depend on the assessment of several factors. There should be a nexus between the circumstance of the Accident and the employment. No case could be the authority for another since there would necessarily be some difference between the two cases (E.S.Le. Vs. Francis Decosta) 1973 2LLJ 494. It is sufficient of its is proved that the injury of the employee was caused by the Accident arising on to and in the course of employment, no matter when and where it occurred. There is not even a geographical limitation. In E.I.S.C. Indore Vs. Babulal 1982 LIC 468 - M.P. High Court observed that where a workmen attending duty in spite of threats by persons giving call for strike and assaulted by them while returning after duty was overhead that injury was one arising out of his employment. A worker was injured while knocking the belt off the moving pulley though the injury caused was due to his negligence, yet such an injury amount to an employment injury. (Jayanthi Lal Dhanji & Co. E.S.Le. AIR 1963 A 210)

6. Employee means any person employed for wages in connection with the work of a factory or establishment to which this Act applies and

(i) who is directly employed by the Principal employer on any work or incidental or preliminary to or connected with the work of factory or establishment where such a work is done be employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer of his agent or work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment or

(iii) whose services are temporarily let or lent on hire to the Principal Employer by the person with whom the person whose services are so lent or let on hire, has entered into a contract of service and includes any person employed for wages at any work connected with the administration of any factory or establishment or any part, department or branch thereof or with the purchase of raw materials for or he distribution or sale of the products, of a factory or establishment, but does not include any member of the Indian Navy Military or Air Force or any person so employed whose wages excluding remuneration for over time work exceed Rs. 1,600 a month.

Provided that an employee whose wages (excluding remuneration for overtime work) exceeds Rs. 1600 per month at any time after (and not before) the beginning of the contribution period shall continue to be an employee until the end of that period. Initially until 1968, the workers with monthly wages not exceeding Rs. 400 were covered in the Act. But it is Rs.500 till 1968 thereafter the limit was raised upto Rs. 1000 in 1975. From 1984 the limit has been raised to Rs. 1600. From 1st April 2004 onwards the wage ceiling for coverage under the Employers' State Insurance Scheme has been enhanced to Rs. 7500 p.m.

In the case of Royal Talkies, Hyderabad Vs. E.S.I.C. Hyderabad (AtR 1978 SC 1476) From 1st April 2004 onwards the wage ceiling for coverage under the Employer' SKK Insurance schemes has been enhanced to Rs.7,500 p.m. there was a Canteen and Cycle stand run be the Private Contractors in the theatre premises. On the question of whether the theatre owner will be liable as principal employer for he payment of E.S.I contribution, the Supreme Court held that all operations namely keeping the cycle stand and running the canteen are incidental or adjuncts to the primary purposes of the theatre and the workers engaged are covered by the definition of employee Sec. 2(9) contains two substantive parts. Unless a person employed qualifies under both, he is not an employee. First he must be employed in or in connection with work of the establishment. The Expression 'in connection with the work' of the establishment ropes in a wide variety of workmen who may not be employed in the establishment buy may be engaged only in connection the work of establishment. Some nexus must exist between the establishment and the work which is ancillary, incidental or has relevance to or link with the object of the establishment. He must not only be employed in connection with the work of the establishment but also be shown to be employed in one or the other of the three categories mentioned in Section 2(9). The language use in Sec. 2(9) (ii) is extensive and diffusive imaginatively embracing all possible alternatives of employment

by or through an independent employer. The word, employee' word include not only person employed in a factory but also persons connected with the, work of he factory. It is not possible to accept the restricted interpretation of the words' 'employees an factories'. The persons employed in the Zonal Offices and Branch Offices of a factory and concerned with the administrative work or the work of canvassing sale would be covered by the provisions of the At E.S.I.C AIR 1978 SC 356). On the question of whether an Apprentice is an (employee and covered under E.S.I. Act, it was held that there is no element of) employment in the case of apprentices as defined under Sec. 2(aa) of the Apprentice Act. Where the legislature intends to include the Apprentice in the definition it has expressly done so as in the case of Industrial Dispute Act. In E.S.I Act there is no scope for holding that the Apprentices are employed in the work of the Company in connection with it for wages within the scope of Section 2 (9) (E.S.I. C Vs. Tata Engineering and Locomotive Company - AIR 1976 SC 66)

Even if the factory canteen workmen are employed by an independent contractor, they will be employees as they are working on the premises of the Factory.

7) Exempted Employee - Sec. 2(10) - Exempted employees means an employee who is not eligible under this Act to pay the employees contribution.

8) Principal Employer - Sec. 2 (17) - Means the following

a. In a factory the owner or occupier of the Factory and includes managing Agent or such owner or occupier, the local representative of the deceased owner or occupier and where a person has been named as the Manager of the Factory, under the Factories Act 1948, the person so named.

b. In any establishment under the control of any Department of any Government in India the authority appointed by such Government in this behalf or where no authority is so appointed the Head of the Department

c. In any other establishment any person responsible in the supervision and control of the Establishment

The expression is wide enough to include the director a Principal employer within the meaning of the Section. If the Managing Agent and the Manager have been appointed, then all of them will simultaneously be the principal employer within the meaning of the Section. In B.M. Lakshmana Murthy Vs.. E.S.I.C 1974-4 SCC 365 the Supreme Court held that where in any two separate but adjoining factories, raw material is used in one factory and finished goods prepared in the other factory the former is the immediate employer and the latter is the principal Employer,

9. Wages (Sec. 2(22)) - means all remuneration paid or payable in cash to an employee after the terms of the contract of an employment expressed or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised

leave, lock out, strike which its not illegal or lay-off and other additional remuneration if any, paid at intervals not exceeding two months but does not include:

a. Any contribution paid by the employer to any Pension Fund or Provident Fund under this Act.

b. Any travelling allowance or the value of any travelling Concession.

c. Any sum paid to the person employed to defray special expense entitled on him by the nature of his employment.

d. Any gratuity payable on discharge.

It was held in Mahalakshmi Glass Works Pvt. Ltd. Vs. E.S.I.C. 1976 Lab. IC 514 payment of incentive Bonus though not in the original terms of Contact of Employment but it amounts to wages in the second part of Sec.2 (22) which deals with additional remuneration. Payment of incentive bonus paid every month is a wage in so far as it is remuneration the employer has undertaken to pay under the term of contract of employment. The language Section 2(22) is wide enough to include remuneration for overtime work. (Birla Cotton Spinning & Weaving Mills's case 1977 (2) LLJ 420). However in Hindustan Motor's case (1979 LIC 852) it has held that over time wages will not form part of wages since over time work cannot be claimed as a matter of right. The subsistence allowance during the suspension period is not included as wages (E.S.I.C. Vs. Management of Kirloskar Systems Ltd. 1985-1 LLJ 173). The layoff compensation paid to an employee under section 25C of industrial Dispute Act was not wages but now this section has been amended to include layoff compensation. Any additional remuneration which is paid not on account of the fulfillment of the terms of contract of employment is not wages. It is well established that there would be any estoppel on a question of law or against a statute. As to whether the particular payment is embraced within the term wages as defined Sec. 2(22) of the Act or not is a matter of Statutory Interpretation. There may be cases where it is not free from ambiguity to interfere the exact nature of payment (ESIC Corpn Vs. Bata Shoe Company 1976 LIC Page 12),

Registration of Factories and establishment (2A)

Every factory or establishment to which, this act applies shall be registered within such time and in such a manner as may be specified in the regulations made in this behalf.

Administrative Set up

The Employees State Insurance Scheme is administered by a body corporate namely the Employees State Insurance Corporation (ESIC) which has members representing Employees, Employers, Central Government and State Government, Medical Profession and the Parliament. The Director General is the Chief Executive Officer of the

Corporation and is also the Ex-Officio Member of the Corporation. The other wings of the corporation are the standing committee and the medical Benefit council. At the Regional and Local Levels, Rational Boards and Local Committees have been constituted. Thus there is an Association of interest concerned at all levels: The Corpn is the Trustee of the interest of insured persons. It discharges it obligations and duties through a network of regional Offices and local offices spread over in the entire country.

In terms of Sec. 4 of the Act the Corporation shall consist of the following members namely:

a) Chairman to be nominated by the Central Government.

b) Vice Chairman to be nominated by the Central Government.

c) Not more than 5 persons to be nominated by the Central Government.

d) One person each representing each of the State in which this act is in force to be nominated by the State Government concerned.

e) One person to be nominated by the Central Government to represent the Union territories.

f) 5 persons representing employers to be nominated by the Central Government in consultation with such organisations of employers.

g) 5 persons representing employees to be nominated by the Central Government in consultation with such organisations of employees.

h) 2 persons representing the Medical profession to be nominated by the Central Government in consultation with such organisation of medical practitioners.

i) 3 members of parliament of whom 2 shall be members of the house of People and 1 shall be a member of the Council of the States.

j) The Director General of the Corporation Ex-Officio.

Term of office

Term of Office of members of referred in clause A,B,C,D and E above shall be such as may be decided by Government nominating them as members. Whereas for the rest of the members excepting the Ex -Officio member, the term of Office shall be for 4 years, commencing from the date on which their nomination or election are notified, provided that a member of the Corporation shall, notwithstanding the expiry of the term of 4 years continue to hold the office until nomination or election of his successor is notified.

Powers and Duties of the Corporation

Section 19 empowers the Corporation, in addition to the scheme of Benefits

specified under this Act, to promote measures for the improvement of the health and welfare of the insured persons and for the rehabilitation and re employment of insured persons who have been disabled or injured any may incur in respect such measure expenditure from the funds of the Corporation within such limits as may be prescribed.

Section 29 empowers the Corporation.

a) To acquire and hold property both moveable and immoveable sell or otherwise transfer such property.

b) It can invest and reinvest and monies which are not immediately required for expenses and to realise such investments.

c) It can raise loans and discharge other loans with the previous sanction of the Central Government.

d) It may constitute for the benefit of its staff or any call of them such provident Fund or other benefit Fund as it may think fit.

The Corporation may appoint Regional Boards, Local Committee and Regional and Local Benefit Councils in such areas and in such manner and delegate to them such powers and functions as may be provided by the regulations. Section 9 empowers the Corporation to make regulation for the administration of the affairs of the Corporation for carrying into effect the Provisions of this Act in respect of matters as specified under Sub-Section 2 thereof.

Duties

The Corporation has to administer the scheme of benefits provided in this Act. However the Act does not prescribe any clear-cut demarcation of duties, but the following duties are expressly prescribed.

The Corporation shall each year prepare budget and shall submit a copy of the budget for the approval of the Central Government. The Corporation shall maintain correct accounts of Income and expenditure (Section 33). The accounts of the Corporation shall be audited (Sec. 34) and the Auditor's Report shall be forwarded to the Central Government. The Corporation shall submit an Annual Report of its working and activities to the Central Government. (Section 35). At Annual Report, the Audited Accounts of the Corporation together with Audited Report and the budget as finally adopted shall be placed before the Parliament and published in the gazette (section 36). The Corporation shall have valuation of its assets and liabilities at intervals of 5 years. Section 17 provides for the Corporation to employ such other staff or officers and servants as may be necessary for the efficient transaction of its business provided that the sanction of the Central Government shall be obtained for the creation of any posts, maximum salary of which exceeds Rs.2250/-.

Wings of the corporation

The Act provide for the constitution of the Standing Committee under Section 8. A member of the standing Committee shall hold Office during the pleasure of the Central Government whereas the other members shall hold office for a period of 2 years from the date of which their elections are notified. Section 10 empowers the Central Government to constitute a Medical Benefit Council Section 22 specifies the duties of the Councils follows:

a) To advise the Corporation and the Standing Committee on matters relating the administration of local benefits the certification for the purpose of grant of benefit and other connected matters.

b) To have such powers and duties of investigations as may be prescribed in relation to complain against medical practitioners in connection with medical treatment and Attendance, and is to perform such other duties in connection with medical treatment and attendance as my be specified in the regulations.

Section 21 (1) of the Act provides that if in the opinion of the Central Government, the Corporation or the standing Committee persistently makes default in performing the duties imposed on it by or under the Act or abuses its powers, that Government may be notification supercede the Corporation and in the case of Standing Committee supercede in consultation with the Corporation the Standing Committee; Provided that before issuing any such notification under this Section, the central Government shall give a reasonable opportunity to the Corporation or to be Standing Committee to show cause why kit should not be superceded and shall consider the explanation and objections if any. Further, in terms of Sub-section (3) when the Standing Committee has been superceded a new Standing Committee shall be immediately constituted in accordance with the Section 8. However, sub-section (4) provides that in the case of supersession of the. Corporation the Central Government may nominate or cause to be nominated or elected new members of the Corporation any may constitute new Standing Committee. A report of the Action taken under this Section shall be placed before Parliament at the earliest opportunity.

c) Employees State Insurance Fund (Sec. 26)

The employees State Insurance Fund is mainly formed out of contributions made by the employees and employers and the share of expenses on medical care by the State Government which is 1/4th depending upon whether medical care is available to the families or not. The contribution payable are collected as pre first Schedule of the Act. The rate of is contribution related to average daily wage of an employee. The contributions are reckoned in terms of week which are grouped in several categories. The rate of employees contribution shall be equal to 2 1/4% of wages payable to an

employee. The employers contribution shall be 5% of the wages payable to an employee. Section 26 of the Act Provides that all contributions paid under this Act and all other monies received on behalf of the Corporation shall be paid into a fund called the employees State Insurance Fund which shall be held and administered by the Corporation for the purpose of this Act. The Corporation may accept grants, gifts, donations from the Central or State Governments Local Authority or any individual or body whether incorporated or not for all or any of the purposes of the Act. A Bank account in the name of employees State Insurance Fund shall be opened with the Reserve Bank of India or any other Bank approved by the Central Government such accounts shall be operated by such officers who are authorised by the Standing Committee with the approval of the Corporation.

Purposes for which the Funds may be expended

Section 28 provides that funds shall be expended only for the following purposes:

i) Payment of benefits and provisions of medical treatment and attendance to insured persons and where the medical benefit is extended to their families, in accordance with the provisions of this Act and defraying the charges and costs in connection therewith.

ii) Payment of fees and allowances to members of the Corporation the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;

iii) Payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of Officers and servants of the Corporation and meeting the expenditure in respect of Officers and other Services set up for the purposes of giving effect to the provisions of this Act.

iv) establishment and maintenance of hospitals, dispensaries and other institutions and the provisions of medical and other ancillary services for the benefit of insured persons and where the medical benefit is extended to their families,

v) payment of contributions to any State Government, local authority or any private body or individuals, towards the cost of medical treatment and attendance provided to insured persons and where the medical benefit is extended to their families, their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;

vi) defraying the cost (including all expenses) of the auditing the accounts of the Corporation and of he valuation of its assets and liabilities;

vii) defraying the cost (including all expenses) of the Employees Insurance Courts

set up under this Act;

viii) payments of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any Officer duly authorised by the Corporation or the Standing Committee in that behalf;

ix) payment of sums under any degree, order or award of any Court or Tribunal against the Corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation;

x) defraying the cost and other charges of instituting or defending and civil or criminal proceedings arising out of any action taken under this Act;

xi) defraying expenditure, within the limits prescribed, on measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and

xii) Such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

Principal Employer to pay contribution

Section 40 of the Act provides that the Principal employer shall pay in respect of every employee whether directly employed by him or through the immediate employer, both the employers contribution and employees contribution. However, he can recover from the employee not being an exempted employee the employees' contribution and not his own, by deduction from his wages and not otherwise. The principal employer shall bear the expenses of remitting the contribution to the Corporation.

Section 42 provides that no employees' contribution shall be payable by or on behalf of the employee whose average daily wages during a wage period are below Rs.50.

Method of Payment of Contribution

Section 43 provides for the Corporation to make the regulations for payment and collection of contribution payable under this Act.

Registration, Contribution and allied provisions

In entry into employment in a covered factory or establishment every employee is required to fill in a declaration Form. He is then allotted a Registration number called Insurance Number which distinguishes and identifies him for the purpose of the scheme. A person is registered 'once and once only open his entry into Insurance Employment. On registration he is provided initially with a temporary identification Certificate issued ordinarily for a period of 13 weeks which may be extended if necessary for a further

period of 13 weeks. Within this period of insured person is given a permanent identity card in exchange for the certificate. The identity card serves as the means of identifications at the dispensary and also at local offices while claiming medical and cash benefits respectively. If identity card is lost before it serves its normal life, a duplicate card is issued on payment as prescribed. Besides, the duty of the employer to pay contribution in the first instance under Section 40 and 42. Section 44 provides that every employer shall submit to the Corporation or its Office, such returns such forms contain in such particulars relating to persons employed and shall maintain such registers and records.

Inspectors, their function and duties

Section 45 provides that the Corporation may appoint such persons as inspectors as they think fit for the purpose of the Act.(11) Determination of contributions in certain cases - (Sec.45A)

The Corporation may on the basis of information available to it, by order, determine the amount of contribution payable in respect of employees of a factory or establishment where no written particulars registers or records are submitted, furnished or maintained in accordance with provisions of Section 44, or where an Inspector or other Officials of the Corporation is obstructed by the Principal or immediate employer or any person in exercising his function and discharging his duties. However, there should be physical obstruction and not mote failure to submit information or records. This Section (45-A) applies to the special kind of cases which constitute a class by itself. Even though there is a separate chapter (Chapter VI) dealing with disputes between parties (Section 74 to 83), this is fundamental right guaranteed in Article 14 of the Constitution, (BMK Industries Vs. ESI 55 FJR 90) what subsection 1 of Sect. 45A contemplates is the total omission to submit a return and not a case the returns submitted does not include persons about whose nature of employment there is a dispute.

Before a final order is made by the Corporation under Sect. 45A(2) it is essential that the person to suffer the claim has to be notified and given another opportunity to explain whether the quantum of determination as made by the Corporation is justified or not. The Order passed under section 45A is a quasi judicial work which will impinge upon the rights of the parties. That being so, the principles of natural justice have to be adhered to. When there is a period of limitation to bar an ordered under Sec.. 45A can be recovered as Revenue Recovery.

The Act provides for the following types of benefits

1) Sickness Benefit

2) Maternity Benefit

3) Disablement Benefit

4) Dependence Benefit

5) Medical Benefit

6) Funeral Benefit

1) Sickness Benefit

Sickness Benefit will include periodical payment to any insured person in case of his sickness. Certified by a duly appointed Medical Practitioner or any person possessing prescribed qualification. (Section 46(1) (1). The operation of Sickness Benefit is upto a maximum period of 56 days which now extended to 91 days with 2 waiting days in a period of any 2 consecutive benefit period which is roughly one year. For entitlement of Sickness Benefit sickness should be occurred during benefit period and contribution in respect of him were payable for not less than half the number of days of the corresponding contribution period. Daily standard benefits are provided in the table which ranges from Rs.2.50 to Rs.20 per day depending upon the average daily wages of that person. For long term diseases such as TB, Leprosy, mental and malignant diseases etc. which are listed as 22 in number extended benefits are given. Quantum of sickness benefit to the extended sickness benefit is payable initially for a period of 124 days with a provision to be extended upto 309 days at a rate which is 25 % higher than standard benefit rate. Enhanced sickness benefit for family planning is paid for the insured persons undergoing sterilization operation and 14 days from Tubectomy operation. This period is however, being extended in the case of post operative complications by sickness arising out of the sterilization operations and the daily rate of this benefit is double the Standard daily rate of benefit.

2) Maternity Benefit

If includes periodical payment to an insured women in case of confinement or miscarriage or sickness arising out of pregnancy; confinement, premature birth of child or miscarriage. Such women will be certified to be eligible for such payment by an authority specified in this behalf. (Sec. 46(1) (b). The rate of benefit is double the Standard Benefit rate. For sickness arising out of pregnancy, confinement, premature birth or miscarriage, benefit for additional period of one month is also provided in the Act. In all cases the benefit is payable only when the insured women does not work for remuneration. There is no waiting period as in the case of sickness benefit. The contributory conditions for this benefit are the same as applicable to sickness benefit., Such benefit shall be payable to the nominated person in case of death of insured women during her confinement or during the period of 6 weeks immediately following her confinement for which she is entitled to maternity benefit. If the child also dies during the said period then the benefit shall be paid for the days upto and including the day of death of the child.

In case of miscarriage she will be entitled to the benefit for the days on which she does not work for remuneration during the period of a weeks immediately following the date of miscarriage. (Section 50(30)).

3) Disabled Benefit

Disabled Benefit of periodical payment to an insured person suffering from disablement, temporary as welt as permanent as a result of accident, or occupational diseases arising out of and in the case of employment. An accident arising in the course of employment, in the absence of proof to the contrary, shall be presumed to be arising out of the employment. An accident shall be deemed to arise our of and if the course of employment not withstanding that he is at the time of Accident acting in contravention of the provision of any law applicable to him or to any orders given by or on behalf of his employer or that he is acting without instructions. An accident happening while an insured person is travelling as a passenger by any vehicle to or from his place of work, with the express or implied permission of his employer be deemed to arise in the course of employment. The Act also contemplates that in a situation where happening of accident may occur while meeting emergencies will be deemed as accident arising out of employment. If an employee contract occupational disease peculiar to that employment the contracting of the disease shall unless the contrary is proved be deemed to be an employment injury. Part A of the 3rd schedule contains a list of occupational diseases. The question of permanent disablement, loss of earning capacity shall be determined by a Medical Board. If the decision of the Medical Board is not satisfactory the parties may appeal to the medical Appeal Tribunal with further right to appeal to the Employees Insurance Court. If there is permanent disablement, the percentage of such disability is assessed by Medical Board and disablement Pension is paid. There are no contributory conditions required for payment of this benefit.

4) Dependence Benefit

The benefit consist of periodical payments to eligible dependance of an insured person who dies as a result of accident or occupational disease arising out and in the course of employment. There are no contributory conditions required for this benefit. The -rate of benefit for all dependance together will be maximum rate of disablement benefit to the insured person. The Dependance benefit is distributed among the wide and minor children in he rate of 3/5 and 2/5. If there are more than such recipients the benefit will be proportionately divided between them. An insured person or his dependants is not entitled to receive or recover from the employer of the insured person or from any other person any compensation or damages under the workmen's Compensation Act or any ,other law for the time being in force or otherwise in respect of an employment injury sustained by the insured person as an employee in this Act.

5) Medical Benefit

The medical benefit includes out-patient treatment, hospitalisation, specialised care including investigation and laboratory Tests, supply of drugs and medicines, miscellaneous services and certain surgical appliance as part of medical treatment. While the insured persons is entitled to avail medical care the members of the family are entitled to restricted medical care as out patient as decided by the concerned State Governments. A person shall be entitled to this benefits during any week for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit or is in receipt of such disablement benefit which does not disentitle him to Medical Benefit under the Regulations. An insured person and his family where the medical benefits are extended to his family, shall have no right to claim any medical benefit except such as is provided by the dispensary Hospital, Clinic or other Institutions to which he or his family is allotted. The regulations may also provide for claiming reimbursement from the Corporation of any expenses incurred in respect of any Medical treatment.

6) Funeral Benefit

The Act provides for payment to the eldest surviving member of the family of the insured person who has died, towards the expenditure on the funeral of the deceased insured person or where the insured person did not have a family or was not living with his family at the time of his death to the person who actually incurs the expenditure on the funeral of the deceased person. The amount of such payment shall not exceed Rs.100/- and the claim shall be made within 3 months of the death, or within such period as the Corporation may allow.

General Provisions relating to Benefits

1) The injured person who works and receive wages on any day is not entitled for cash benefits on that day.

2) The person who is under medical Care shall obey the instructions of the medical officer and he should not leave the area of treatment without his permission.

3) Cash benefit payable under ESI Act are not liable to attachment or as well in its execution to any court decree or Order (Sec.60)

4) The right to receive any benefit is not transferable or Assignable

5) The insured person shall not be entitled to receive for the same period both sickness benefit and maternity benefits or both sickness benefit or disablement benefit etc. However, where a person is entitled to more than one.

6) Of the benefits he shall have to choose which benefits he shall receive (Sec. 65)

7) No employer shall dismiss, discharge of reduce or otherwise punish an employee

during the period the employee is in receipt of sickness benefit of maternity benefit nor shall he, expect as provided under the Regulations, dismiss, discharge or reduce or otherwise punish an employee during the period he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulations, to arise out of the pregnancy or confinement rendering the employee unit for work. During such period notice of dismissal or discharge or reduction given to an employee shall not be valid or operative. It was held in Premier Tyres Ltd Vs. A. Abraham' 79 Lab IC 684 that no service of an employee covered under this scheme would be terminated during the period he was in receipt of sickness benefit and no order of termination issued during the period shall be valid and operative Sec. 73 came up for interpretation in the case of Buckingham & Carnatic Co. Ltd. Vs. Venkatiah) AIR 1964 SC 1272. The Supreme Court held that this Section applies only when the employer does some positive act of dismissing, discharging or reducing or otherwise punishing an employed person and the main object of the clause is to put a severe moratorium against all unitive actions during the pendency of the employees sickness.

The employer is also prohibited against dismissal of an insured person absenting for a period of 18 months when that employee is under medical treatment for TB, Leprosy, Mental and malignant diseases, etc. as provided in the list of diseases under regulations 98.

Employees Insurance Court - Adjudicatory Machinery

Every claimant has got the right of rising the dispute before the Employee's Insurance Court in respect of his claim under the Act. Employees Insurance Court consist of a Judicial Officer appointed by the State Government. Dispute between the employers and the Corporation also are instituted before the employees Insurance Court. The jurisdiction of the Civil Court is barred in all such matters (Sec. 74).

Matters to be Decided by ESI Court

1) If any question or dispute arises as to

a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or

b) the rate of wages or average daily wages of an employee for the purposes of the Act, or

c) the rate of contribution payable by a principal in respect of any employee, or

d) the person who is or was the principal employer in respect of any employee, or

e) any direction issued by the Corporation under Sec. 55A on a review of any payment of dependants benefits, or

f) (Omitted)

g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable for recoverable under this Act, or any other matter required to be or which may be decided by the Employee's Insurance Court under this Act.

Such question or dispute subject to the provisions of sub-section (2A) shall be decided by the Employees' Insurance Court or accordance with the provisions of this Act.

2. Subject to the provisions of sub-sections (2A), the following claims shall be decided by the Employees' Insurance Court namely;

a. Claim for the recovery of contribution from the principal employer;

b. Claim by a principal employer to recover contributions from amy immediate employer.

c. Omitted.

d. Claim against a principal employer under Sec.. 68.

e. Claim under Section 70 for the recovery of the value of amount of the benefits received by a person when he is not lawfully entitled thereto; and

f. any claim for the recovery of any benefit admissible under this Act:

If in any proceedings before the ESI Court the disablement question arises, and the decision of the medical board or a Medical Appeal Tribunal has not been obtained on the same and the decision of such question is necessary for determination of claim or question before ESI Court, the Court shall direct the Corporation to have the question decided first and thereafter shall proceed with the determination of the claim. The section makes it clear that employees Insurance Court specially constituted under the Act has got power to decide the question which is subject matter of dispute between the parties as to whether house rent allowance paid by the employer to its employees is wages and he is liable to pay employees contribution and employers special contribution on such payment. It was held in Agarwala Hardware Industries Vs. ESI Corporation 1976 Lab. I C 1354 that when proceedings under Section 75 are pending before the Insurance Court application for interim stay can be maintained by the ESI Court. A claim for recovery of contribution shall also be decided by The Employees Insurance Court. The powers of Corporation are given in the Section 45A whereby the Corporation may on the basis of information available to it determine the amount of contribution payable and to make necessary demands. If the employer refused to comply with the demand so

made the matter can come up before the ESI Court under Section 75 of the Act. The court cannot decline to perform its duty because the Corporation has failed to discharge its own function. (ESI Corporation Bopal Vs. Central Press and another 1977 - 1 LLJ 479). It is not open to the Tribunal to consider the Board's Report merely as a piece of evidence or adjudicate the correctness thereof. (ESIC Vs. Hafiz Kahn -7 Lab. LC 1175). The mere fact that the employer raised the dispute before Insurance Court does not preclude a criminal court from entertaining a complaint from the corporation.

Section 76 provides fro Institution of Proceedings in ESI Court having jurisdiction for the local are in which the insured person was working at the time question or dispute arose. If the Court is satisfied that any matter arising out of any proceeding pending before it can be more conveniently dealt with by any other employees Insurance Court in the same State, it may order such matter to be transferred to such other Court. The State Government has also power to transfer any matter pending before the ESI Court to such other court. The proceeding before the ESI shall be commenced by application. Every such application shall be made within a period of 3 years from the date on which the cause of action arose. The .cause of action in respect of claim for benefits shall arise only by making a claim for benefits shall arise only by making a claim of benefits in accordance with the regulations made in that behalf within a period of 12 months after the claim became due or within such further period as the ESI Court may allow on grounds which appears to be reasonable. In the case of Corporation claim to recover contribution from principal Employer or a claim by principal employer for recovering contribution from an immediate employer shall not deem to arise till the date by which the evidence of contribution having been paid is due to be received by the Corporation under the Regulations. Every such application shall be in such form and contents such particulars and accompanied by such fee as may be prescribed by rules made by the State Government. The ESI Court shall have all powers of Civil Court for the purpose of summoning and enforcing attendance of the witness, compelling the discovery and production of documents and material objects, his administering oaths, recording evidence and such Court shall be deemed to be civil court within the meaning of Sec. 195 of Chapter XIV of the code of Criminal Procedure 1973. Its order shall be enforceable as if it was a decree passed by Civil Court.

An application before the Court on behalf of the insured person or his dependent can be made by authorised legal Practitioner or by an Officer of a registered Trade Unions or with permission of the Court by any other person so authorised. The ESI Court may submit any question of law to the decision of the High Court and it does so shall decide the question pending before it is accordance with such decision. An appeal from an order of ESI Court shall lie to the High Court only on substantial question if law within a period of 60 days, and provisions Sec. **and 12 of Indian Limitation Act, 1908 shall apply to appeals under the Section (82). Where the Corporation has presented

an appeal against an order of ESI Court, that Court, may if so directed by the High Court shall pending the decision of the appeal withhold the payment of any sum directed to be paid by the, order appealed against.

Offences and Penalties

1) **Section 84** prescribes punishment with imprisonment upto 3 month or with fine not exceeding Rs. 500 or with both for false representation for the purpose of

(i) causing any increase in payment benefit under this Act.

(ii) causing any payment of benefit to be made where no payment or benefits is authorised under the Act.

(iii) Avoiding any payment to be made by himself under this Act or

(iv) extending any other person to avoid any such payment under this Act.

2) **Section 85** provides that any person shall be punishable with imprisonment or fine or with both if any person.

a) fails to pay and contribution which under this Act he is liable to pay nor

b) deducts or attempts to detect from the wages of an employee the whole or any part of the employer's contribution or

c) in contravention of Section 72 reduces the wages or any privileges or benefits admissible to an employee, or

d) In contravention of Section 73 or any regulation dismisses discharges, reduces or otherwise punishes an, employee, or

e) fails or refuses to submit any return required by the regulations or makes a false return, or

f) obstructs any Inspector or other Official of the Corporation in the discharge of his duties or

g) is guilty of any contravention of or non-compliance with any other requirements of this Act or the rules or the regulations in respect of which no special penalty is provided he shall be punishable.

i) where be commits an offence under clause (a) with imprisonment for a term which may extend to six months but

a. which shall not be less than three months, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages;

b. which shall not be less than one month in any other case and shall also be liable to fine which may extend to two thousand rupees;

Provided that the Court may, for any adequate and special reasons to be recorded in the judgement, impose a sentence of imprisonment for a lesser term or of fine only in lieu of imprisonment;

ii) where he commits an offence under any of the class (b) to (g) (both inclusive), with imprisonment for a term which may extend to one thousand rupees or with both.

3) Enhanced Punishment after previous conviction (Sec. (85A)

Whoever commits the same offence after having been convicted by the Court punishable under this Act, shall for every such subsequent offence be punishable with imprisonment for a term which may extend to one year or with a fine which may extend to Rs.20 or both provided where such subsequent offence is for failure by the employer to pay any contribution which he is liable to pay, he shall for every such subsequent offence be punishable with imprisonment for a term which may extend to one year but which shall not be less than 3 months and shall also liable to fine which may extend to Rs. 400. The Corporation may recover from the employer such damages not exceeding an amount of arrears. However, before recovering the damage; the employer shall be given a reasonable opportunity of being heard and the damages may be recovered as an arrear of Land Revenue. Apart from giving punishment the court may also require the employer to pay the amount of contribution in respect of which the offence was committed.

Prosecution (Sec. 86)

No prosecution under this Act shall be instituted except by or with the previous sanction of the Insurance Commissioner or such other Officer of the Corporation as man be authorised. No Court inferior to that of Presidential Magistrate or the Magistrate to the first class shall try any offence under this Act. No Court shall take cognizance of any offence under this act, except on a complaint made in writing in respect thereof within 6 months of the date on which the offence is alleged to have been committed.

Exemption

Notwithstanding the above provisions, the act provides exemption for certain factories or establishment or class of factories or establishments. Section 87 provides that the appropriate Government may exempt any factory or establishment in any specific area from the purview of he Act by notification and subject to such conditions as may be specified initially such exemption will be for a period of one year and thereafter may be renewed from time to time. The State Government is empowered to exempt any person or class of persons employed in any factory or establishment from the operations of the Act. The above exemptions may be granted to the Government. Factories and establishments.

Miscellaneous

The Central Government is empowered to make rules in consistent with the Act for the purpose of given effect to the provisions thereof. But this power can be exercised only after consultation with the Corporation and subject to the conditions of previous publication. The Central Government may take rules in regard to the following matters. (Section 95(2)).

a) the manner in which nominations and elections of members of the Corporation, the Standing Committee and the Medical Benefit Council shall be made;

b) the quorum at meetings of the Corporation. Standing committee and the Medical Benefit Council and the minimum number of meetings of those bodies to be held in the year;

c) the records to be kept of the transaction of business by the Corporation the standing Committee and the Medical Benefit Council;

d) the powers and duties of the principal Officers and the conditions of their service;

e) the powers and duties of the Medical Benefit Council;

f) **the** manner in which and the time within which appeals may be field to medical appeal tribunals or Employee's Insurance Courts;

g) the procedure to be adopted in the execution of contracts;

h) the acquisition, holding and disposal of property by the Corporation;

i) the raising and repayment of loans;

j) the investment of the funds of the Corporation and of any provident or other benefit fund and their transfer or realisation;

k) the basis on which the periodical valuation of the assets and liabilities of the Corporation shall be made;

l) the bank or banks in which the funds of the Corporation may be deposited, the procedure to be followed in regard to the crediting of moneys accruing or payable to the Corporation and the manner in which any sums may be paid out of the Corporation funds and the Officers by whom such payment may be authorised;

m) the accounts to be maintained by the Corporation and the forms in which accounts shall be kept and the times at which such accounts shall be audited;

n) the publication of the accounts of the Corporation and the report of auditors, the action to be taken on the audit report, the powers of auditors to disallow and surcharge items of expenditure and the recovery of sums so disallowed or surcharged.

o) the preparation of budget estimates and of supplementary estimates and the manner in which such estimates shall be sanctioned and published.

p) the establishment and maintenance of provident or other benefit fund for officers and servants of the Corporation; and

q) any matter which is required or allowed by this Act to be prescribed by the Central Government.

The State Government is also empowered to make rule under this Act in respect of the following matters (Sec. 96)

a) the constitution of Employees' Insurance Courts, the qualifications of persons who may be appointed judges thereof, and the conditions of service of such judges;

b) the procedure to be followed in proceedings before such courts and the execution of orders made by such Courts;

c) the fee payable in respect of applications made to the Employees, Insurance Court, the costs incidental to the proceedings in such Court, the form in which applications should be made to it and the particulars to be specified in such applications;

d) the establishment of hospitals, dispensaries and other institutions the allotment of insured persons or their families to any such hospital, dispensary or other institutions;

e) the scale of medical benefit which shall be provided at any hospital, clinic, dispensary or institution the, keeping of medical records and the furnishing of statistical returns;

f) the nature and extent of the staff, equipment and medicines that shall be provided at such hospitals, dispensaries and institutions;

g) the conditions of service of the staff employed at such hospitals dispensaries and institutions; and

h) any other matter which is required or allowed by this Act to be prescribed by the State Government.

A comparison of the Section 95 and 96 shows that the power to the Central Government to make rules under this act are not everlapping but distinct and specialised in particular fields of responsibilities in the administration and the execution of the provisions of the Act.

The Corporation is empowered to make regulations in respect of the following matters;

a) the time and place of meetings of the Corporation, the Standing Committee and the Medical Benefit Council and the procedure to be followed at such meetings;

b) the time within which and the manner in which a factory or establishment shall be registered;

c) the matters which shall be referred by the Standing Committee to the Corporation

for decision;

d) the manner in which any contribution payable under this Act shall be assessed and collected;

e) the levy of interest at a rate not exceeding six per cent, per annum on contributions due but not paid;

f) reckoning of wages for the purpose of fixing the contribution payable under his Act;

g) the certification of sickness and eligibility for any cash benefit;

h) the method of determining whether an insured person is suffering from one or more of the diseases specified in the Third Schedule;

i) the assessing of the money value of any benefit which is not a cash benefit;

j) the time within which and the form and manner in which any claim for a benefit be made and the particulars to be specified in such claim;

k) the circumstances in which an employee in receipt of disablement benefit may be dismissed discharged, reduced or otherwise, punished;

l) the manner in which and the place and time at which and benefit shall be paid;

m) the method of calculating the amount of cash benefit payable and the circumstances in which and the extend to which communication of disablement and dependent's benefits, be allowed and the method of calculating the commutation value;

n) the notice of pregnancy or of confinement and notice and proof of sickness;

o) specifying the authority competent to give certificate of eligibility for maternity benefit;

p) the manner of nomination by an insured women for payment of maternity benefit in case of her or her child's death.

q) the production of proof in support of claim for maternity benefit or additional maternity benefit;

r) the conditions under which any benefit may be suspended;

s) the conditions to be observe by a person when in receipt of and benefit and the periodical medical examination of such persons;

t) the visiting of sick persons;

u) the appointment of medical practitioners for the purposes of this Act, the duties of such practitioners and the form of medical certificates;

v) the qualifications and experience which a person should possess for giving certificate of sickness;

w) the constitution of medical board appeal tribunals;

x) the penalties for breach of regulations by fine (not exceeding two days, wages for a fist beach and not exceeding three days' wages for any subsequent breach) which may be imposed on employees;

y) the circumstances in which and the conditions subject to which any regulation may be relaxed, the extent of suoh relaxation, and the authority by whom such relaxation may be granted

z) the returns to be submitted and the registers or records to be maintained by the principal and immediate employers the forms of such returns registers or records, and the times at which such returns should be submitted and the particulars which such returns, registers and records should contain;

z1) the duties and powers of Inspectors and other Officers and servants of the Corporation;

z2) the method of recruitment, pay and allowances, discipline superannuation benefits and other conditions of service of the Officers and servants of the Corporation other than the Principal Officers;

z3) the procedure to be followed in remitting contributions to the Corporation; and

z4) and matter in respect of which regulations are required or permitted to be made by this Act.

At this time when the Corporation's fund so permit the Corporation may enhance the scale of any benefit admissible under this Act and the period for which such benefit may be given and provide or contribute towards the cost of medical care for the families of insured persons. If any difficulty arise in giving fact of the provisions of this Act the Central Government may by order published by the Officials Gazette make such provisions or give such directions not inconsistent with the provisions of the Act is appears to be necessary or expedient for removing the difficulty.

Suggested Questions

1) Explain the scope and object of the E.S.I. Act.,

2) Enumerate the powers and duties of the E.S.I. Corporation.

3) State the purposes for which the funds may be expended.

4) What are the different types of benefits provided under the E.S.I. Act?

(C). THE EMPLOYEES PROVIDENT FUND AND MISCELLANEOUS PROVISION ACT, 1952

Object and Scope of the Act

The employees Provident Fund and Miscellaneous Provisions Act 1952 provides for the Institution of Provident Fund, Family Pension Fund and Deposit Linked Insurance Fund for employees in factories and other establishments. This is one of the retirement benefits meant for the economic welfare of the Employees. The Provident

Fund Schemes envisaged by the Act, provide for monetary funds for the utilisation of Employees or their Dependants for their rehabilitation after retirement from the active service This a social security measure. Pensions are paid out of regard for past meritorious serviced The basis of gratuity and Provident Fund are different. Each one is a salutary benefaction statutorily guaranteed independently of the other. The object of the Act is apparent no only from preamble but also from its various provisions.

Application of the act

The Act applies to every establishment which is a factor engaged in any industry specified in schedule 1 and in which 20 or more persons are employed (Sec. 1(3). The Act also applies to such other establishment which the Central Government may, by notification in the Official Gazette, specify. The Act can be made applicable by the Central Government of any establishment even if it employs less than 20 persons. But the Government has to give 2 months notice of its intention to apply. Irrespective of anything the Act may be applied to an establishment if the employer and the majority of employers agree for the application of the Act in their establishment.

The application of the Act to certain establishments is subject to the Provisions stipulated in section 16 which provides exemptions regarding the application of Acts like Establishment Registered under the Co-operative Societies Act. The Employees Provident Fund Act also provides for the application of the act to non factory)' establishments. For the application of this Act of any Factory)' in a schedule industry)' all the following conditions are to be satisfied.

Firstly the manufacturing process must be carried on in any part of the premises. Secondly a minimum of 20 persons must be employed in the establishment..

Number of enactments dealing with separately for establishments may provide for the applications of this Act to such establishments. The use of words' any other establishments' are not limited to commercial establishments. The Madras High Court held that the cosmopolitan club of Madras is an establishment within the meaning 01 Section 1(3) (b). Once an establishment fails within the purview of this Act if shall continue to be governed by this Act notwithstanding that the number of persons therein at any time falls below 20 Sec. 1(5).

The constitutional validity of this Act was challenged on the grounds of discrimination and excessive delegation. It was held that law lays down a rule which i- applicable to all the factories or establishment similarly placed. It makes a reasonable classification without making any discrimination between factories placed in the same class or group (Delhi Cloth Mills Vs. RPF Commissioner AIR 1961 All 309 Besau Kumar Vs. Eagle Rolling Mills AIR 1964 SC 1260). The underlying idea behind the Provisions of the Act is to bring all kinds of employees within its fold as and when the Central Government might think fit after reviewing the circumstance of each class of establishments. This is a beneficial legislation enacted as a measure of social justice and should be construed liberally so as to confer benefit on the employees to the maximum extent. A solicitor's Firm is an ėstablishment within the meaning of this Section

Section 1(3) is not confined to direct labour and the contract labour also enters the determination as to the applicability of this subject Section. (Nazeeha Traders (Pvt) Ltd. Vs. RPFC 1966 1 LLJ 334) The term establishment his not been defined in the Act and consequently it shall have to be given its ordinary meaning with reference to the definition of the term factory. (Delhi Cloth and General Mills Ltd. Vs. RPFC UP 2 LLJ 444).

In counting the number 20 of the employees employed in a factory, the Primary Activity of the factory has to be ascertained. The Factory may be incidentally engaged in some thins else also but that would not diminish the primary character of the establishment. It is the dominant activity of the Establishment that determines whether it comes under the purview of the Act. The liability to contribute to the Provident Fund is created from the moment the scheme is applicable to a particular establishment. The act does give option to the employee to become or not to become a member of the fund. Even a casual or temporary workman are also covered under the purview of this Act.

The act also provides that it shall not apply to certain establishment as described under Section 16(1) of the Act. Such establishments include (a) establishment registered under the Co-operative Societies Act or under any other law for the time being enforce in any activity relating to co-operative societies, employing less than 50 persons working without the aid of power (b) any other establishments employing 50 or more persons or 20 or more but less than 50 persons until the expiry 3 years in the case of former and 5 years in the case of latter from the date on which the establishment is or has been set up. It is pertinent that mere change of location does not make an establishment a newly set up one.

The period of infancy should be calculated from the first day of manufacturing process commenced in the factory and not from the moment of time when the figure of 20 or more workmen is first reached. (The State of Punjab Vs. Satpal AIE 1970 SC

655). A mere change in the partnership deed does not mean that a new business has come into existence for the purpose of Sec. 16(1)

Definition

Section 2 of the Act defines the terms to understand the meaning of the different sections and provisions thereof. It is necessary to know the meaning of important expressions.

a) Appropriate Government means (Sec.a)

(i) in relation to an establishment belonging to or under the control of Central Government or in relation to an establishment connected with the Railway Company. Major Port a Mine or an Oil Field or a Control industry or in relation to an establishment having Departments or branches in more than one State, the Central Government.

ii) in relation to any other·establishment the State Government.

b) Basic Wages means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of contract of employment and which are paid or payable in cash to him but does not include (i) the cash value of any food concession (ii) dearness allowance that is to say all cash payments by thereafter name called paid to an employee on account of a rise in the cost of living, house rent allowance, overtime allowance, Bonus, Commission or any other similar allowance payable to the employee in respect of his employment or all work done in such employment, (ii) any present made by the employer.

The Delhi High Court in Burma Shell Oil Storage and Distributing Company Ltd Vs. R.P.F.C. Delhi (1980 IC) observed that emoluments constitute basic wage must be earned by an employee while on duty. It is a payment made to anyone who was not on duty and not paid to same who were on duty it can not be regarded as basic wages. Jay Engineering Works Vs. Union of India (1963. 2 LLJ 72), it was held that payment made for Provident Fund between quota and norm were part of basic wage under the Section and that payments beyond the norm were production bonus and excluded from the definition. The subject allowance paid as a result of agreement and which is not treated as part of basic Wages are dearness allowance, it could not be included in computation of contribution by the employer 1982 I LLJ 28.

c) contribution means a contribution payable in respect of a number under a scheme or contribution payable in respect of an employee to whom the insurance scheme applies.

d) control industry mens any industry the control of which by the Union Government has been declare by Central Act to be expedient in the Public interest.

e) Employer means.

i. the owner or occupier of factory

ii. the agent of such owner or occupier

iii the legal representative of a deceased owner or occupier of the factory.

iv. any person named as Manager of the Factory under Sec.7(1)(f) of the Factories Act

In the case of establishments other than the factory employer means;

i) the person who has the ultimate control lover the affairs of the Establishment.

ii), the authority which was ultimate control over the affairs of the Establishment.

iii) where the affairs of the establishment are entrusted to Manager, Managing Director or Managing Agent, such Manager, Managing Director or Managing Agent.

f) The employee means any person who is employed for wages in any kind of work manual or otherwise in or in connection with the work of an establishment and gets his wages directly or indirectly from the employer and includes any person employed by or through the contractor or in connection with the work of an establishment.

The definition is very wide in its scope and covers persons employed in clerical work or other Office work in connection with the factory or establishment. The inclusive part of the definition makes it clear that even if a person has been employed through the contractor in or in connection with the work of establishment he would all within description of the employee. The definition includes a part time employee who is engaged for any work in establishment which is incidental or connected with the work of establishment and where a Co-op. Bank engages a sweeper working twice or thrice a week, a night watchman keeping watch on the establishment and gardener working for 10 days a month are held as employees.

Railway Employees Co-op. Bank Society Ltd. Vs. Union of India 1980 Lab IC 1212.

ff) exempted employee means an employee to whom the scheme or insurance scheme as the case may be would, but for the exemption granted under Sec. 17 have applied.

fff) exempted establishment means in respect of which a exemption has been granted under Section 17 from the operation of all or any of the provisions of any scheme or the insurance Schemes as the case may be whether such an exemption has been granted to an establishment as such or to any person or class of persons employed therein.

g) the industry specified in schedule 1 and includes any other industry added to the schedule by notification.

h) Insurance Fund means the deposit linked Insurance .Fund establishment under subsection 2 of Sec.6C.

i) Insurance Scheme means the employee Deposit Linked Insurance Scheme framed under Sub-Section 1 of Sec. 6C.

j) Manufacture or manufacturing process means any process for making altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking-up, demolishing or otherwise treating or adopting any article or substance with a view to it use, sale, transport delivery or disposal.

k) member means a member of the fund

l) Scheme means the employees Provident Fund Scheme under Sec. 5.

Scheme of the Act

a) The employee Provident Fund Scheme

The Central Government is empowered to frame the scheme for the establishment of provisions for employees or for any ways of employees. The fund so established shall vest in, and be administered by the Central Board Constituted under Section 5 A. The scheme framed may provide for all or any of the matters specified in schedule 2. The scheme may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in the said scheme.

The validity of the Section was challenged on the ground it infringes article 14 and -19 (i)(f) of the Constitution in the case of Hindustan Electric Company Ltd. Vs.

R.P.PC. Punjab AIR 1959 Punjab 271. It was held that Sec., 5 does not infringe any of the articles of the Constitution. It was further held that Sec. 5 cannot be struck down on the ground that it is an unreasonable restrictions on the fundamental right to carry on the business of a company.

b) Administration of the Fund

The Board of Trustees or Central Board (Sec. 5A). The Central Government by notification constitute a Board of Trustees for the territories to which this Act extends, consisting of the following persons:

1) Chainnan to be appointed by the Central Government.

2) Not more than 5 persons appointed by the Central Government from amongst its Officials.

3) not more than 15 persons representing Government of such states as the Central Government may specify in this behalf appointed by Central Government.

4) 6 persons representing employers of the establishment to which the scheme

applies appointed by the Central Government after consultation with such organisation of employers as may be recognised by the Central Government in this behalf.

5) 6 persons representing employees in the establishment to which this scheme applies after consultation with such organisation of employees.

The scheme provides for the terms and conditions subject to which a number of the Central Board may be appointed and the time, place and procedure of the meeting of the Central Board. It also provides the manner in which the Board shall administer the funds vested in its subject.

State Board (Sec. 5B)

The Central Board is empowered to Constitute State Board in consultation with the State Government by notification. The State Board shall be constituted in such manner as may be provided for in the scheme. The Central Government may assign such powers and duties to the Board.

The above said Central and State Board shall be a body Corporate and shall have perpetual succession and a common seal.

The Central Government shall appoint a Central Provident Fund Commissioner who will be the Chief Executive Officer of the Central Board and he will function under the control and supervision of the Board. The Deputy Provident Fund Commissioner, the Regional Provident Fund Commissioners and other Officers may also be appointed by Central Government. They have to assist the Central Provident Fund Commissioner in his work. The Board appoint other officers and employees for efficient administration. Posting under the Central Board carrying a maximum monthly salary of not less than Rs.500 shall be made only in consultation with the Union Public Service Commission. The State Board may with the approval of the state Government appoint such other staff as deem consider necessary.

a) Contributions and other matters

Which may be provided for in the scheme Sec. 6 provides that the contribution which shall be paid by the employer to the fund shall be 6¼% of the basic wages, dearness allowance and retaining allowance if any payable to each of the employee and the employee contribution shall be equivalent to the contribution payable by the employer in respecting of him and may, if any employees so desires and if the scheme makes provision therefor been amount not exceeding 8½% of his basic wages, dearness allowance, retaining allowance if any. Dearness allowance shall include cash value of any food concessions allowed to an employee, retaining allowance is the sum to be paid to an employee, retaining allowance is the sum to be paid to an employee for retaining his services when the factory is not working. The Provident Fund Schemes as made payment of contribution monetarily and the act provides more exceptions in which a

specified employer can avoid this monetary liability, State Vs. S. Chandani (AIR 1959 Pat. 9).

b) Employees Family Pension Scheme

Section 6(A) of the Act provides for framing a scheme known as employee Family Pension Scheme for the purpose of providing family Pension and life Assurance Benefits to the Employees of the establishment or class of establishments to which this Act applies. The Central Government is empowered to frame such scheme by notification in the Official Gazette.

Family Pension Fund Creation and Administration

The Family Pension Fund shall be establishment into which shall be paid from time to time tin respect of every such employee

a) such portion not exceeding 1/4th of the amount payable under Section 6 as contribution by the employer as well as the employee as may be specified in the family pension scheme.

b) such sums as are payable by the employer of an exempted establishment under subsection (6) of Section 17 and C such sums being not less than an amount payable in pursuance of clause (a) out of the employer's contribution under Sec. 6 as the Central Govt may, after the appropriation made by the Parliament by law in this behalf specify.

The fund shall be vest in and be administered by the Central Board. The family pension scheme may provide for all or any of the matters specified in Schedule III. The scheme may provide that any of its provisions shall take effect either prospectively or retrospectively on such duty as may be specified in his behalf in that scheme.

Section 6(B) provides that the Central Government shall after the appropriation made by the Parliament by law in this behalf pay such further sums as may be determines by it into the Family pension fund to meet all the expenses in connection with the administration of the family pension scheme. Other than the expenses towards the cost of any benefits provided by or under the scheme.

The Central Government may add, may not or very either prospectively or retrospectively the scheme and all such notification shall be allowed before Parliament after they are issued

c) Employees Deposit Linked Insurance Scheme

Section 6 C of the Act empowers the Central Govt to frame a scheme to be called Employees' Deposit Linked Insurance Scheme for the purpose of providing life insurance benefits to the employees of any establishment or class of establishment or to which this act applies.

After framing the scheme a deposit linked insurance Fund shall be established, into which shall be paid by the Employer from time to time in respect of every such employee in relation to whom he is the employer. Such amount not being more than 1 % of the aggregate of the Basic Wages. Dearness and Retaining allowance (if any). For the time being, payable in relation to such employee as central Govt may by notification in Official Gazette specified.

By virtue of this power the Central Govt has specified 0.50/0 of the aggregate of the basic wages Dearness Allowance on the Retaining allowance for the time being payable to his employees as the rate of contribution which shall be payable every month by the employer. The Central Govt shall after due appropriation made by Parliament by law contribute to the Insurance fund in relation to each employee of any establishment or class of establishments to which this act applies, an amount representing one half of the contribution which the employer is required by Sub-Sec. (2) to make.

The employer shall pay to the Insurance Fund such further sums of money not exceeding 1/4th contribution which he is required to make under Sub-Section 2 as the Central Govt may from time to time determines to meet all the expenses in connection with the administration of the insurance scheme other than the expenses towards the cost of any benefits provided by or under the Scheme. The Central Bank shall after due appropriation made by Parliament by law pay into Insurance Fund such further sums of money representing one half, the sums payable by the employer in Clause A to meet all the expenses in connection with the administration of the Insurance Scheme other than expenses towards the cost of any benefit provided by or under the Scheme. The Central Govt by notification has specified the contribution of 0.1 % of the Basic wages including DA etc. of the employee payable by the employer every month for meeting Administrative expenses of the scheme.

The Insurance Fund shall vest in the Central Board and be administered by it in such a manner as may be specified in the scheme. The Insurance Scheme may provide for all or any of the matters specified in Schedule IV

Determination of money due from employers

Section 7 A vest the power of determining the amount due from any employer under the provisions of this act with the Central Provident Fund Commissioner and Deputy Provident Fund Commissioner or Regional Provident Fund commissioner. For this purpose, he may conduct such enquiry as may deem necessary. The Officer conducting the enquiry shall have the power of a court under the Civil Procedure Code for trying the suit in respect of the following matters;

a) Enforcing the attendance of any person or examining him of oath.

b) Requiring the discovery and production of documents.

c) Receiving evidence on Affidavit.

d) Issuing commissions for the examination of witnesses.

and such enquiry shall be deem to be judicial proceedings within the meaning of Sec. 193 and 228 and for the purpose of Sec. 196 of the Indian Panel Code.

The employer shall be given a reasonable opportunity of representing his case before an order determining the amount due from him is based under this Section. However, once the order has been made under this Section the same shall be final and shall not be questioned in any court of law. Section 7 A(4). This Section was challenged as unconstitutional under Article 19(1). It was held in Wire netting Stores Vs. Regional Provident Fund Commissioners and others 38 FJR 277. Though the Section does not impose and article 14 of the Constitution is not contracted, the powers under this Section appear to be very wide and there is no provision for the forum whether the demand under Section 7 A can be questioned. It is, therefore, of paramount importance that where wide powers are vested in the statutory authority and further provisions is not made to challenge such order to exercise of that power should be made in a careful manner so that the result may not be arbitrary. (Bajranga Lal Padia Vs. State of Orissa and others Act 1975 LIC 830)..If there is any inconfirmity in the order the employer should be entitled to relief in the High Court. (Jwala Prasad Sikharia Vs. R.P.F.Cf. 1973 -2-LLJ 594), an Inspector can not determine the amount due from any employer under any provisions under this Act. The appropriate Officers specified for the power of jurisdiction to not only determine the amount due but also to decide all jurisdictional and relevant, facts necessary for the final decision. All the amount due and after giving employer a reasonable opportunity of representing this case 1975 LIC and 954. A demand for contribution toward PF for the pre-discover period is legal. Any determination under this Section is liable on the part of the Employer for which drastic action can be taken like Certificate Proceeding, etc. it is incumbent upon the authority while passing an assessment Order to give a detailed calculations and the basis on which an amount payable by the employer has been arrived at Indian Mica and Micanite Industries Ltd Vs. R.P.FCf. 1974 LIC 415. The order passed should be a subjecting order and should indicated the basis of calculations of which the quantum of PF Payable is determined.

Mode of Recovery of Money Due from Employers

Sec.8 prescribes the mode of recovery of money due from Employers by the Central P.F.Commissioner such office as may be authorised by him by notification in the Official Gazettes in this behalf as an arrears of land Revenue the amount due form the employer recoverable under the Section shall relate to following categories.

a) Amount due from the employer in relation to an establishment to which this Scheme or the Insurance Scheme / applies in respect of any contribution payable to the fund as the case may be. The insurance fund for damages Recoverable under Sec. 14b,

accumulations required to be transferred under sub-sec 2 of Sec.15 or under Sub-sec. 5 of Sec.17 or any charge payable by him under any other provisions of this Act or Scheme.

b) Any amount due from the employer in relation to an establishment in respect of any damages recoverable under Section 14b or any charges payable by him the appropriate Govt under any provisions of the Act or under any of the conditions specified under Sec. 17 or in respect of the contribution payable by him towards family Pension Scheme or the Insurance Scheme under Sec. 17.

Recovery of money by employers and contractors

Section 8 A lays down that.the amount of contribution that is to say the employer's contribution as well as the employees' contribution and any charges on the basis of such contribution for meeting all cost administering the fund paid or payable by an employer in respect of an employee employed by or through the contractor either by deduction from any amount payable to the contractor in any contract or as a debt payable by the Contractor.

A contractor may recover from such employer the employees, contribution under any scheme by deduction from the basic wages, dearness allowance etc. payable to such employee. However, no contractor shall be entitled to deduct the employers contribution or the charges from the wages of employees. The employer can not argue on the ground that he is unable to realise the money from the contractor or he can not deduct it from wages of the employees as their wages are not directly paid by him.

Priority of payment

Section 11 of the Act provides that the contribution towards Provident Fund shall link prior to other payments in the fund of employer being adjudicated insolvent. The amount sanding to the credit of any member of the fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any degree or order of any court.

Section 12 prescribes an employer to reduce directly or indirectly the wages of any employee to whom the scheme or the insurance scheme applies or the total quantum of benefits in the nature of Old Age Pension, gratuity or Provident Fund or Life Insurance to which employee is entitled under the terms of employment simply for the reason of his liability for the payment of any contribution to the fund.

Transfer of accounts

Sec IA of the Act provides that where an employee in any establishment to which this Act applies leaves his employment and obtain reemployment in another establishment to which this act does not apply, the amount of accumulation to the credit of such

employee in the fund or as the case may be in Provident Fund of the establishment left by him shall be transferred within such time as may be specified by Central Government in this behalf to the credit of his account in the Provident Fund in the establishment in which he is employed if he so desires and the rules in relation to the Provident Fund permit such transfer.

Sub Sec 2 further provides that where an employee employed in an establishment to which this act does not apply leaves his employment and obtain re employment in another establishment to which this act applies, the amount of accumulation to the credit of such employee in the Provident Fund of the establishment left by him if the employee so desires and the rules in relation to such Provident Fund permit be transferred to the credit of his account in the fund or as the case may be in Provident Fund of the establishment in which he is re-employed.

Protection Against Attachment

Statutory protection is provided to the amount of the contribution to Provident Fund under section 10 from attachment from any court degree. Sub Sec 1 of Sec 10 provides that the amount standing to the credit of any exempted employee in a Provident Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt of liability incurred by the member or the exempted employee and neither the Official assignee appointed under the presidency Towns Insolvency Act 1909 nor any receiver appointed under the Provincial Insolvency Act 1920 shall be entitled to or have any claim on any such amount.

The sub Section 2 provides that any amount standing to the credit of the member in the fund or of an exempted employee in a Provident Fund at the time of his death and payable to his nominee under the scheme or the rules of the Provident Fund shall subject to any deduction authorised by the said scheme or rules raised in the nominee and -shall be free from any debt or other liability incurred by the deceased employee or the nominee before the death of the member of the exempted employee. The above provision shall apply in relation to the family pension or any other amount payable in the Family pension Scheme as they apply in relation to the any amount payable out of the fund.

Appointment of Inspectors and their duties.

The appropriate Government may appoint such persons as it think if to be inspectors for the purpose of this Act by notification under the Official Gazette. (Sec. 13) Such Inspectors shall be responsible *for* the provident Fund Scheme, Family Pension Scheme or the Insurance Scheme and their jurisdiction will be defined by such Govt.

The Inspector is an instrument of enquiry on behalf of the Govt into the correctness of any information furnished in connection with this Act, or for the purpose of

ascertaining whether any of the Provision of the Act have been complied with in respect of an' establishment to which this scheme is applicable *for* the purpose of ascertaining whether the provision of this act are applicable to any establishment to which the scheme has not been applied, for the purpose of determining whether the conditions subject to the exemption was granted under Sec. 17 are being complied with by the employer in relation to exempted establishment.

Duties of Inspectors

For the purpose of fulfilling the above objective, the inspector has assigned to carry out the following statutory duties.

a. require an employer (or any contractor from whom any amount is recoverable under Section 8A) to furnish such information as he may consider necessary.

b. at any reasonable time (and with such assistance, if any, as he may think fit, enter and search) any (establishment) or any premises connected therewith and require anyone found in charge thereof to produce before him for examination any a/c books, registers and other documents relating to the employment of persons or the payment of wages in the (establishment).

c. examine, with respect to any matter relevant to any of the purposes aforesaid, the employer (or any contractor from whom any amount is recoverable under Section 8A), his agent or servant or any other person found in charge of the (establishment or any premises connected therewith or whom he Inspector reasonable cause to believe to be or to have been, and employee in the establishment).

d. make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment and, where he has reason to believe that any offence under this Act has been committed by an employer, seize with such assistance as he may think fit, such book, register or other document or portions thereof as he may consider relevant in respect of that offence).

e. exercise such other powers as the scheme may provide.

The above powers conferred on Inspector in connection with the fund can be exercised by him in connection with the Family Pension Scheme also.

The Inspector shall be deemed to be a public servant within the meaning of Sec. 21 of the IPC and is empowered to make any search or seizure.

Powers vested in the Government

(i) Power to Apply Act to certain Establishments (Section 3)

Where immediately before this Act becomes applicable to an establishment there is in existence a provident fund which is common to the employees, employed in that

establishment and employees in any other establishment, the central Government may, by notification in the Official Gazette, direct that the provisions of this Act shall also apply to such other establishment.

(ii) Power to Add to Schedule (Section 4)

1. The Central Government may, by notification in the Official Gazette, add to Schedule I and other industry in respect of the employees whereof if it is of opinion that a Provident Fund Scheme should be framed under this Act and thereupon the industry so added shall be deemed to be an industry specified in Schedule I for the purpose of this Act.

2. All notification under Sub-Section (1) shall be laid before Parliament as soon as may be, after they are issued.

(iii) Power to Recover Damages from the Employer (Section 14B) in the following cases when the employer :

a. makes default in the payment of any contribution to the Fund, the Family Pension Fund or the Insurance Fund; or

b. fails to transfer the accumulations required to be transferred by him section 15(2) or Section 17(5) Standing to the credit of employees; or

c. commits default in the payment of any charges payable under any other provisions of this Act, or of any Scheme or insurance.

Scheme or under any of the Conditions specified under Section 17 the Central Provident Fund Commissioner or such other Officer as may be authorised by the Central Government by a notification in the Official Gazette, may recover from the employers, such damages not exceeding the amount of arrear as it may think fit.

Provision to Section 14B provides that before levying or recovering such damages, the employer shall be given a reasonable opportunity of being heard. Since the powers exercisable under his Section is of punitive nature, the principles of natural justice must be followed by the Government in exercising its powers; Shyam Glass works Vs. State of U.R, A.I.R. 1979 All 19.

In Allahabad Canning Co. Vs. Regional Provident Fund Commissioner: 1-76 Lab 1 C 4 79(All) it was held.

a. where the employer commits default in payment of contribution and no order is passed for its recovery for a long time (in this case about five years) the presumption is that delay it condoned and no damages can be levied under Section 14 B of the Act.

b. an order under Section 14 B for payment of damages for default by the employer in paying contribution in time is quasi-judicial in nature. The party must be given an

opportunity of being heard and the order must give reasons. Non-compliance with these requirements will tender the order illegal) A.I.R. 1976 S.C. 862).

In another case Muraska paint and Varnish Works Ltd Vs. Union of India and other 1976 Lab. I.C. 1453 it was held that failure to make payment within stipulated time results in default in payments of contribution. The Central Provident Fund Commissioner or any other Officer authorised by the Central Government can recover from the employer such damages not exceeding the amount of arrears as he may think, fit. There is no dual authority, one for imposition and the other for recovering. If the Act gives right to recover a certain amount as damages to an authority for breach of the provisions of the Act by asking party to comply with the provisions, there is no estoppel against statute. It gives direction to authority concerned and that discretion cannot be cut down in any manner by way of representation made by provident Fund Inspector. It was all held that damages must have some co-relation wish the loss suffered as a result of delayed payment and the authority imposing the penalty must apply is mind to this aspect of the matter and if the authority has exercised its director properly in accordance with law, it cannot be interfered with a writ petition.

(iv) Power to Exempt (Section 17)

Section 17 authorises the appropriate Government to grant exemptions to certain establishments or persons from the operations of any or any of the provisions of the Schemes. Such exemption shall be granted by notification in the Official Gazette subject to such condition as my be specified therein.

a) when in the opinion of the appropriate Government the rules framed by such establishments of its Provident Fund with respect to the rates of contribution are not less favourable than those specified in the Section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act or any Scheme in relation to the employees in any other establishment of a similar character or

b) if the employees pf such establishment are in enjoyment of benefits in the nature of provident Fund, Pension or gratuity and the appropriate Government is of opinion that such benefits, separately or jointly are on the whole not less favourable to such employees than the benefits provided under this Act or any scheme in relation to employees in any other establishment of a similar character.

Sub-section (1- A) empowers the Central Government to exempt by notification in the Official Gazette and subject to such conditions as may be specified in the notification, from the operation of all or any of the provisions of the Family Pension Scheme, any establishment if the employees of such establishment are in enjoyment of benefits in the nature of family pension and the Central Government is of the opinion that such benefits are on the whole not less favourable to such employees than the

benefits provided under this act or the Family Pension scheme in relation to employees in any other establishment of a similar character.

Sub-section (2) provides that any Scheme may take provisions for exemption of any person or class of persons employed in any establishment to which this Scheme applies from the operation of all or any of the provisions of the scheme, if such persons or class of persons is entitled to benefits in the nature of Provident Fund, gratuity or old age pension and such benefits separately or jointly, are on the whole not less favourable than the benefits provided under this Act or the Scheme Provident that no such exemption shall be granted in respect of a class of persons unless the appropriate Government is of the opinion that the majority of persons constituting such class desire to continue to be entitled to such benefits.

Sub-Section (2-A) provides that, the Central Government may, if requested so to do by the employer, notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt any establishment from the operation of all or any of the provisions of the Insurance Scheme, if it is satisfied that the employees of such establishment are, without making any separate contribution or payment of premium, in enjoyment of benefits in the nature of life insurance, whether linked to their deposits in Provident Fund or not, and such benefits are more favourable to such employees than the benefits admissible under the Insurance Scheme.

Sub-section (2-B) provides that, without prejudice to the provisions of Sub-section (2-A), the Insurance Scheme may provide for the exemption of any person or class of persons, employed in any establishment and covered by that scheme from the operation of all or any of the provisions thereof, if the benefits in the nature of life insurance admissible to such person or class of persons are more favourable than the benefits provided under the Insurance Scheme.

Sub-section (3) provides that where in respect of any person of class or person employed in an establishment an exemption is granted under this Section from the operation of all or any of the provisions of any Scheme (whether such exemption has been granted to the establishment wherein such person or class of persons is employed or to the person or class of persons as such), the employer in relation to such establishment.

a) shall, in relation to the provident fund, pension and gratuity to which any such person or class of persons is entitled, maintain such accounts, submit such returns, make such investments, provide for such facilities for inspection and pay such charges as the Central Government may direct;

b) shall not at any time after the exemption, without the leave of the Central Government reduce the total quantum of benefits in the nature of pension, gratuity or

provident fund to which any such person or class of persons was/were en titled at the time of the exemption; and

c) shall, where any such person leaves his employment and obtains re-employment in another establishment to which this Act applies, transfer within such time as may be specified in this behalf by the Central Government, the amount of accumulations, to the credit of that person in the provident fund of the establishment left by him to the credit of that person's account in the provident fund of the establishment in which he is re-employed or, as the case may be, in the Fund established under the Scheme applicable to the establishment.

Sub-section (3-A) provides that, where, in respect of any person or class of persons employed in any establishment, an exemption is granted under Sub-section (2-A) or Subsection (2-B) from the operation of all or any of the provisions of the Insurance Scheme (whether such exemption is granted to the establishment wherein such person or class of persons as such), the employer in relation to such establishment.

a) shall, in relation to the provident fund, pension and gratuity to which any such person or class of persons is entitled, maintain such accounts, submit such returns, make such investments, provide for such facilities for inspection and pay such charges as the Central Government may direct;

b) shall not at any time after the exemption, without the leave of the Central Government reduce the total quantum of benefits in the nature of pension, gratuity or provident fund to which any such person or class or persons was/ were entitled at the time of the exemption; and

c) shall, wherein any such person leaves his employment and obtain re-employment in any other establishment to which this Act applies, transfer within such time as may be specified in this behalf by the Central Government, the amount of accumulations to the credit of that person in assurance fund of the establishment left by him to the credit of that person's account in the insurance fund of the establishment in which he is re-employed or, as the case may be in the Deposit-linked insurance Fund.

Cancellation of he exemption provided: Sub-section (40 of Section 17 provides, for cancellation of the exemption by the authority which granted it if the employer fails to comply with the following:

a) in the case of exemption granted under Sub-section (1) with any of the conditions imposed under that Sub-section or with any of the provisions of Sub-section (3);

aa) in the case of an exemption granted under Sub-section (2) with any of the conditions imposed under that Sub-section.

b) in the case of an exemption granted under Sub-section (2) with any of the provisions of Sub-section (3)

c) in the case of an exemption granted under Sub-section (2A) with any of the conditions imposed under that 'Sub-section or with any of the provision of the Sub-section (3A) and

d) in the case of an exemption granted under Sub-section (2-B) with any of the provisions of Sub-section (3-A)

Sub-section (5) further provides that on the cancellation of the examinations under Subsections (1),(1-A),2-A) or (2), (2-B) the amount of accumulations to the credit of every employee to whom such exemption applied, in the provident Fund, Family Pension Fund or the Insurance Fund of the establishment in which he is employed shall be transferred within such time and in such manner as may be specified in the Scheme or the Family Pension Scheme or the Insurance Scheme to the credit of his account in the Fund or the Family Pension Fund, -or the Insurance Fund as the case may be.

Sub-section (6) provides that subject to the provisions of Sub-section (1 -A) the employer of an exempted establishment or of an exempted employee of an establishment to which the provisions of the Family Pension Scheme apply shall notwithstanding any exemption granted under Sub-section (1) or Sub-section (2) pay to the Family Pension Fund such portion of the employer contribution as well as the employees contributions to its Provident Fund within such time and in such manner as may be specified in the Family Pension Scheme.

It was held in Consolidated Corporation Production P. Ltd. Vs. Hemchandra Rao and another 1977 Lab. I.C. 251 that an exemption from statutory scheme under Section 17 of the Act to voluntary Scheme more beneficial to employee for making reduced contribution, the employer cannot reduce his contribution to what he has been paying to the employee.

(v) Delegation of powers (Section 19)

Section 19 provides that appropriate Government may-direct that any power of authority or jurisdiction exercisable by it under this Act the Scheme or the Family Pension Scheme or he insurance Scheme shall in relation to such matters and subject to such conditions, if any as may be specified in the direction be exercisable also by such offer or authority subordinate to central Government or State Government as the case may be, as may be specified by such Governments in the notification.

(vi) Power to Remove Difficulties (Section 19A)

Section 3. A contains provisions relating to removal of any difficulty that may arise in giving effect to the provisions of this Act and in particular, to the following doubts;

i) whether an establishment which is a factory, is engaged in any industry specified in Schedule I;

it) whether any particular establishment is an establishment falling within the class of establishments to which this Act applies by virtue of a notification under clause (b) of Sub-Section (3) of Section 1; or

iii) the number of persons employed in the establishment; or

iv) the number of year which have elapsed from the date on which an establishment has been set up; or

v) whether the total quantum of benefit to which an employee is entitled has been reduced by the employer.

For the removal of doubts in the above matters, the central Government may by order make such provisions or give such direction not inconsistent with the provisions of this Act as appeal to it to be necessary or expedient and the order of the Central Government so issued shall be final.

The power to move the Central Government under this Section is not confined to the Statutory authorities. Even an owner of an establishment can move the Central Government to resolve the dispute. T.R. Ragahave lyengar and Co. Vs. R.P.F.C. A.I.R 1963 Mad. 238. If once a doubt has been raised in respect of any matter no further action can be taken by the authorities to enforce those provisions of the Act Dhanalakshmi Weaving Works Vs. R.P.F.C. A.I.R. 1963 Jer. 219.

Penalties and Offences

Sections 14, 14-A, 14-AA, 14AB, 14-AC and 14-C deal with penalties and offences by the employer and power of the Court to make orders. These sections are enumerated below:

(i) Penalties

Section 14 deals with penalties for offences. Sub-Section (1) provides that whosoever for the purpose of avoiding any payments to be made by himself under this, Act, the Scheme or the family Scheme or the Insurance Scheme or of enabling any other person to avoid such payment knowingly makes or causes to be made any false statement or representation shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

Sub-section (l-A) provides that an employer who contravenes or makes default in complying with, the previsions of Section 6 or clause (a) of Sub-Section (3) of

Section 17 in so far as it relates to the payment of inspection charges, or paragraph 38 of the scheme in so far as it relates to the payment of administrative charges shall be publishable with imprisonment for a term which may extend to six months but- (a) which shall not be less than 3 months in case of defaults in payment of the employees' contribution which has been deducted by the employer from the employees wages (b)

which shall no be less than one month in any other case; shall also be liable to fine which may extend to Rs.2000.

Provided that the Court may, for adequate and special reasons to be recorded in the judgement, impose a sentence of imprisonment for a lesser term or of fine only in lieu of imprisonment.

Sub-section (I-B) provides that, an employer who contravenes or makes default in complying with the provisions of Section 6 C or clause (a) of Sub-Section (3-A) of section 17 in so far as it relates to the payment of inspection charges shall be punishable with imprisonment for a term which may extend to six months but which shall no be less than one month and shall also be liable to fine which may extend to two thousand rupees.

Sub-Section (2) Provides that subject to the provisions of this act, the Scheme or the Family Pension Scheme may provide that any person who contravenes or makes default in complying with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1000- or with both.

It is also provided in Sub-Section (2-A) that if any employer contravenes or makes default in complying with any provisions of the Act or of any condition subject to which exemption was granted under Section 17 shall, if no other penalty is elsewhere provided by or under his Act for such contravention or non compliance, be punishable with imprisonment which may extend to 3 months or with fine which may extend to Rs.1000 with both.

(ii) Offences by Companies

According to the previsions contained in Section 14-A, where the person committing an offence under this Act is a Company, every person who at the time the offence was committed was in charge of and was responsible to do Company for the conduct of the business of the Company as well as the Company shall be deemed to be guilty of the offence and shall be liable to be proceeded against end punished accordingly. Provided that nothing contained in this Sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Sub-Section (2) Provides that notwithstanding anything contained in Sub-Section (1) where an offence under this Act, the Scheme or the Family Pension Scheme or the Insurance Scheme has been committed by a company and it is proved that any offence has been committed with the consent or connivance of or is attributable to, any neglect on the part of any director or manager or secretary or other Officer of the Company, such director, Manager or secretary or other Officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished

accordingly. The Company includes body corporate, a firm and other association of individuals and 'director' in relation to a firm means a partner in the firm for the purposes of this section.

(iii) Enhanced punishment in certain cases after previous conviction

Section 14-AA provides that whoever having been convicted by a Court of an offence punishable under this Act, the scheme or the Family Pension Scheme, or the Insurance Scheme commits the same offence shall be subject for every such subsequent offence to imprisonment for a term which may extend to one year but which shall not be less than three months and shall also be liable to fine which may extend to Rs.4000.

(iv) Certain Offences to be Cognizable

Section 14-AB provides that notwithstanding anything contained in the code of Criminal Procedures, 1973, an offence relating to default in payment of contribution by the employer punishable under the Act shall be cognizable.

(v) Cognizance and Trial of Offences

Section 14-AC Provides, that no Court shall take cognizance of any offence punishable under this act, the Scheme or the Family Pension Scheme or the Insurance Scheme except on a report in writing of the fact constituting such offence made with the previous sanction of the Central Provident Fund commissioner or such other Officer as may be authorised by the Central Government by notification in the Official Gazette, in this behalf, by an Inspector appointed under Section 13. Further, no court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence under this Act or the Scheme or the Family Pension Scheme or the insurance Scheme.

(vi) Powers of the Court to make orders

Sub-Section (1) of Section 14-C provides that where on employer is convicted of offence of making defaulting in the payment of any contribution to the Fund or Family Pension Fund or the Insurance Fund or in the transfer of accumulation required to be transferred by him under Sub-Section (2) of Section 15 or Sub-Section (5) of

Section 17, the Court may in addition to awarding any punishment, by order in writing require him within a period specified in the order (which the court may, if it thinks fit and on application in that behalf, from time to time extend to pay the amount of contribution or transfer the accumulation, as the case, may be, in respect of which the offence was committed.

Sub-Section (2) provides that where an order under the above provisions is made, the employer shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, if any allowed by the court, but if, on the expiry of such period or decided period, as the case may be the order of the Court has

not been fully complied with, the employer shall be deemed to have committed a further offence and shall be punishable with imprisonment in respect thereof under Section 14 shall also be liable to pay fine which may extend to Rs. 100/- for every day after such expiry on which he order has not been complied with.

Suggested Questions

1) Explain the manner in which the Employees Provident Fund Scheme is administered.

2) State the rules relating to Employees Deposit Linked Insurance Scheme.

(D) THE MATERNITY BENEFIT ACT, 1961

Introduction

The Maternity Benefit Act, 1961 was passed by the Central Government, as a measure of social justice to women workers employed in the industry. It was enacted to regulate the employment of woman in certain establishments for certain periods before and after child birth and to provide for maternity benefit and certain other benefits. The central Government has extended the Act to mines and circus by framing the Maternity Benefit (Mines and Circus) Rules 1963.

Scope

The Act applies, in the first instance, to every establishment being a factory, mine or plantation including any such establishment belongs to Government and to every establishment where in persons are employed for the exhibition of equestrian, acrobatic and other performances (Sec.2 (1)). The Act empowers the State Government to extend all or any of the provisions of the Act to any other establishment or class of establishment industrial, commercial, agricultural or otherwise. But the state Government can do so only with the approval of the Central Government after giving not less than two months, notice by notification in the official gazette of its intention to do so.

Definitions (Section 3)

(a) Appropriate Government: It means, in relation to an establishment being a mine or an establishment where in persons are employed for the exhibition of equestrian, acrobatic and other performances the appropriate Government is central Government and in relation any other establishment the state Government.

(b) Child: Child includes a still born child.

(c) Delivery: It means the birth of a child

(d) Employer: Employer means (i) in relation to an establishment which is under the control of the Government, a personal authority appointed by the Government, for the supervision and control of employees or where no person or authority is so appointed

the head of the department.

(ii) in relation to an establishment under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed the chief executive officer of the local authority.

(iii) In any other case, the person who, or the authority which has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person, whether called a manager, managing director, managing agent, or by any other name, such person.

e) Establishment: Establishment means a factory, a mine, a plantation, or an establishment to which the provisions of this Act have been declared under Sec. 6 1) to be applicable.

(f) Factory: Factory means a factory as defined in Sec.2 (m) of the Factories Act, 1948.

(g) Inspector: Inspector means an inspector appointed under Sec. 14 of this Act.

(h) Maternity benefits: Maternity benefit means the payment referred to in sec. 5(1) of the Act.

(i) Miscarriage: Miscarriage means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty sixth week of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code.

(n) Wages: It means all remuneration paid or payable in case to a woman, if the terms of the contract of employment, express or complied were fulfilled. It includes,

(i) Such cash allowances.(including dearness and house rent allowance) as a workman is for the time being entitled to;

(ii) incentive bonus;

(iii) the money value of the concessional supply of food grains and other articles.

But wages do not include (i) any bonus other than incentive bonus, (ii) overtime earning and any deduction or payment made on account of fine, (iii) any provident fund contribution or contribution to any pension fund and (iv) any gratuity payable on the termination of service.

(o) Woman: Woman means a woman employed whether, directly or through any agency, for wages in any establishment.

Prohibition of Employment: Under Sec. 4 of the Act, an employer is prohibited from knowingly employing any woman in any establishment during six weeks immediately following the day of her delivery or her miscarriage. The section provides that no woman shall work for a period of six weeks in any establishment immediately following the day

of her delivery of her miscarriage. Further, on a request made by the pregnant woman, the employer should not give during the period of one month immediately preceding the six weeks period before the date of delivery, any work which is of arduous nature or any work which involves long hours of standing. Such woman shall not be employed in any work which is likely to interfere with her pregnancy or the normal development of the child or in any way likely to cause miscarriage or affect her health adversely.

Payment of Maternity Benefit: (Sec-5)

The employer shall be liable to pay maternity benefit to every woman employed by him at the rate of the average daily wages for the period of her actual absence immediately preceding and including the day of her delivery and, for the six weeks immediately following that day.

The average daily wages means that average of the woman's wages payable to her for three calendar months preceding the date from which she absent herself on account of maternity or one rupee day, whichever is higher.

Conditions to be fulfilled before claiming maternity benefit under the Act

1. She must have actually worked in an establishment or a factory for a period of not less than one hundred and sixty days in the twelve months immediately proceeding the date of expected delivery shall be takin into account.

2. The maximum period for which she shall be entitled to maternity benefit shall be twelve weeks, that is, six weeks up to and including the day of her delivery and six weeks immediately following that day.

If the woman dies during this period, the maternity benefit shall be paid upto the date of her death. Where a woman delivered the child and dies during her delivery or during the period of six weeks immediately following the date of her delivery, leaving the child, she is entitled to maternity benefit for the entire period of six weeks following her delivery.

If the child also dies the she is eligible to claim the benefit for the days upto and including the date of the death of the child. A woman worker who expects a child is entitled to maternity benefits of a maximum period of twelve weeks which is split up into two periods, namely prenatal and postnatal.

Every woman who is entitled to claim maternity benefit under this Act shall continue to be so, notwithstanding the application of the Employees State Insurance Act, 1948 to the factory or establishment in which she is employed. The benefit continues until she becomes qualified to claim maternity benefit under Sec. 50 of the E.S.I Act. (Sec. 5-A).

Every woman who is employed in a factory or other establishment to which the

E.S.I. Act applies and whose wage does not exceed Rs.1,000 (excluding remuneration for overtime work) is entitled to the payment of maternity benefit under this Act. It is also necessary to fulfill the conditions specified in Sec 5(2) in order to certain benefit under this Act.

Notice of claim for maternity benefit and payment there of (Sec. 6)

Any woman employed in an establishment and entitled to maternity benefit under this Act may give notice" in writing to her employer. In that notice she must state about her maternity benefit and any other amount to which she is entitled, may be paid to her or to such person as she may nominate in the notice. She must also declare that she will not work in any establishment during the period for which she receives maternity benefit.

In the case of a woman who is pregnant the notice shall state the date from which she will be absent form work. This date will not be earlier than six weeks from the date of her expected delivery. If she has not given the notice when she was pregnant, she may give such notice as soon as possible after the delivery.

Amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of proof that she is pregnant. The amount due for subsequent period shall be paid by the employer to the woman within forty eight hours of production of proof that the woman has delivered a child. If she dies before receiving the amount the employer shall pay such amount to the person nominated by the woman and in case there is no nominee, to her legal representative (Sec .7).

Every woman entitled to maternity benefit under this Act shall also be entitled to receive a medical bonus of Rs. 2 from her employer if no pre-natal confinement and post natal care is provided by the employer free of charge (Sec. 8)

Dismissal during absence or pregnancy (Sec.12).

When a woman absent herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or an account of such absence. Further it is unlawful for the employer even to give notice of discharge" or dismissal during such absence or to vary any of the conditions of service to her disadvantage. Any discharge or dismissal of a woman not in accordance with these provisions, shall not deprive her of the maternity benefit or medical bonus.

However where the dismissal is for any gross misconduct, the employer may deprive her of the maternity benefit or medical bonus by communicating an order in writing.

According to Sec. 13 no deduction shall be made from the normal and usual daily wages of a woman entitled to maternity benefit for the reason that the nature of work assigned to her is not of arduous nature or breaks for nursing the child are allowed to her under the provisions of Sec. 11.

Forfeiture of maternity benefit (Sec.18) if a woman works in any establishment, after she ha been permitted by her employer to absent herself under the provisions of sec. 6, for any period during such authorised absence, she shall forfeit her claim to the maternity benefit for such period.

Leave and Nursing breaks

In case of miscarriage on production of such proof, a women is entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage (Sec. 9).

A woman suffering from illness arising out of pregnancy, delivery, premature birth of a child or miscarriage on production of the prescribed proof is entitled to leave with wages at the' rate of maternity benefit for a maximum period of one month (Sec. 10) This facility is available to her in addition to the period of absence allowed to her under Sec. 6 or under Sec. 9 of the Act.

Nursing Breaks: Where a woman after having delivered a child returns to duty after such delivery, she shall in addition to the interval for rest be allowed in the course of her daily work two breaks for nursing the child until the child attains the age of fifteen months.

Inspectors: (Sect 14) The appropriate Government may be notification in the official Gazette appoint such officers as it thinks fit to be Inspectors for the purposes of this Act and may define the local limits of jurisdiction within which they shall exercise their functions under this Act.

Powers and duties of Inspectors (Section 15 and 17)

An Inspector may exercise all or any of the following power subject to such restrictions or conditions as may be prescribed:.

1) He may enter at all reasonable times with assistants, if any premises or place where women are employed or work is given to them in an establishment, for the purposes examining any registers, records and notices required to be kept or exhibited by or under this Act and require production of the same for inspection.

2) He may examine any person whom he finds in any premises or place and believes that she is employed in the establishment.

3) He may require the employer to give information regarding the names and addresses of women employed payments made to them and applications or notices received from them under this Act.

4) He may take copies of any registers and records or notices of any portions thereof.

Further, under Sec. 17 an inspector can direct certain payments to be made to a woman under this Act. Any woman claiming maternity benefit or any other amount to which she is entitled and any person claiming payment under Sec.7 has been improperly withheld may make a complain to the Inspector. The Inspector may of his own motion or on receipt of a complain make an inquiry of cause an inquiry to be made. If he is satisfied that payment has been wrongfully with held, he may direct the payment to be made in accordance with his orders. Every Inspector appointed under this Act shall be deemed to be a public servant within the meaning of Sec.21 of the Indian penal code 1860.

Penalties: If any employer contravenes the provisions of this Act or the rules made thereunder he shall be punishable with imprisonment which may extent to three months or with fine which may extend to Rs. 500 or both. Where the contravention is regarding maternity benefit or payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition recover such maternity benefit or amount as if it was a fine and pay the same to the person entitled thereto (Sec.21).

Whoever fails to produce on demand by the Inspector any register or document kept in custody or conceals or prevents may person from appearing before an Inspector for being examined by the Inspector, shall be punishable with imprisonment which may extend to three months or with fine which may extend to Rs.500 or with both.

(E). THE PAYMENT OF GRATUITY ACT, 1972

Gratuity, like provident fund or pension is kind of retirement benefit. The term gratuity is understood as a gift or present for the service rendered. In earlier days it was treated as a payment gratuitously made by the employer to the employee at his pleasure. But as a result of several decisions, gratuity was regarded not as a gift or present made by the employer, but a rightly earned service benefit. It is a payment which is intended to help the workmen after their retirement whether the retirement is due to superannuation or of some physical disability. The general principle underlying gratuity schemes is that by faithful service over a long period the employee is entitled to claim a certain amount as retirement benefit. (Indian Hume Pipe Co. Ltd. Vs. Its workmen AIR. 1960 S.C. 251) Therefore the term gratuity means some sort of retired benefit which will be given to an employee in consideration of long and continuous service, to help him after retirement.

The Payment of Gratuity Act, 1972 was passed by the parliament in August 1972. It came into force on 6th September, 1972. It is one of the social security measure adopted by the Central Government to protect the interest of the workers and his family in the even of his retirement. Though gratuity is a retirement benefit, it is independent of any other compensation, or benefit available to an employee under the contact of service, in E.I.D. Parry Ltd., Vs. Industrial Tribunal, Madras (1977, I LLJ 276) it has

been held that gratuity is payable to an employee in addition to the pension benefit.

Substitute for Provident fund and pension benefit

Applicability of the Act: The act applies to

(a) every factory, substitute for provident fund and pension benefits. Mine, oil field, plantation, port and railway company:

(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State in which ten or more persons are employed or were employed on any day of proceeding twelve months;

(c) such other establishment or class of establishments; in which ten or more employees are employed, or were employed, on any day of the proceeding twelve months, as the Central Government may by nidification, specify in this behalf. (Sec.1(3)).

The Act covers all person employed in the above establishments whose wages do not exceed Rs.1000 per month.

Definitions

Appropriate Government: (Sec.2(a)) - In relation to any of the following establishment appropriate Government means the Central Government.

(a) an establishment belonging to or under the control of the Central Government.

(b) an establishment having branches in more than one state.

(c) an establishment of a factory belonging to, or under the control of the Central Government.

(d) an establishment of a major port, mine, oil field or railway company.

On any other case, 'appropriate Government' means the State Government

Completed year of service (Sec.2(b) - It means continuous service for one year.

Continuous service (Sec. 2(c)- It means uninterrupted service. But it includes service which is interrupted by sickness, accident, leave, layoff the strike or a lockout or cessation of work not due to any fault of the employee concerned, whether such uninterrupted service was rendered before or after the commencement of this Act. (Sec.2(c)).

In the case of an employee whose service has been interrupted during the course of one year, he shall be deemed to be in continuous service if he has been actually employed by an employer during the twelve months immediately preceding the year for not less than.

(i) 190 days, if employed below the ground in a mine or

(ii) 240 days in any other case, except, when is employed in an seasonable establishment (Explanation to Sec 2(c)).

An employee of a seasonal establishment shall be deemed to be in continuous service if he has actually worked for not less than seventy five percent of the number of days on which the establishment was in operation during the year (Explanation II to Sec. 2(c) Controlling authority; (Sec.2(d)) controlling authority means an authority appointed by the appropriate Government under Sec.3 the appropriate Government may by notification in the Official Gazette, appoint any office to be a controlling authority who shall be responsible for the administration of this Act. Different controlling authorities may be appointed for different areas.

Employee (Sec.2(e): Employee means any person (other than an apprentice) employed on wages not exceeding Rs.1000 per mensum in any establishment, factory mine, oil field, plantations, port, railway company or shop. He may employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work. The terms of his employment, may be express or implied.

Employee does not, however, include any such person who is employed in a managerial or administrative capacity or who holds a civil post under the central Government or a State Government or who is subject to the Air Force act, 1950 or the Navy Act, 1957 (Sec.2(e).

Family: (Sec.2(h)): In the case of a male employee, family shall be deemed to consist of himself, his children whether married or unmarried, his dependent parents and the widow and children of his predeceased son, if any.

In the case of a female employee, family shall be deemed to consist of herself, her husband her children whether married or unmarried, her dependant parents and the dependent parents of her husband and the widow and children of her predeceased son, if any. She may, by a notice in writing to the controlling authority exclude her husband and his dependent parents from being included in her family (provision to sec. 2(h).

Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his family. Where a child of a employee has been adopted by another person and such adoption is under the personal law of the person making such adoption lawful, such child shall be deemed to be excluded from the family of the employee (Explanation so Sec.2(h).

Retirement: Sec.29(q) : It means termination of the service of an employee otherwise than on superannuation.

Superannuation: Sec.2(r) : superannuation in relation to an employee means:

(i) the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employed shall vacate

the employment; and

(ii) in any other case, the attainment by the employee of the age of fifty - eight years.

Wages: Sec.2(s) - 'Wages' means all emoluments which are earned by an employed while an duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash. It includes dearness allowance but it does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

Payment of Gratuity: (Sec.4)

Payment of Gratuity to an employee under the Act is mandatory Sec. 4 enumerates the circumstances in which gratuity become payable and the cases when gratuity may be forfeited.

Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years.

a) on his superannuation, or

b) on his retirement or registration, or

c) on his death or disablement, due to accident or disease.

Where the termination of employment is due to death or disablement, the completion of continuous service of five years is not necessary (Proviso 1 to Sec. 4). In case of his death, gratuity payable to him shall be paid to his nominee or if no nomination has been made, no made to his heirs (proviso 2 to Sec.4(1).

Rate of gratuity: An employee is entitled to get gratuity as the rate of fifteen days wages for every completed year of service sec. 4(2) lays down that the employer shall pay gratuity to an employee at the rate of fifteen days wages for every completed year of service or part there of in excess of six months, based the rate of wages last drawn by the employee. Generally the last drawn basic pay and Dearness allowance are taken together for the calculation of gratuity.

In the case of piece-rated employee, daily wages shall be computed on the averages of the total wages receive by him for a period of three months immediately before the termination of his employment. Where an employee is employed in seasonal establishment, the employer shall pay the gratuity at the rate of seven days wages for each season.

However, if an employee had worked less than 240 days, due to absence without leave, such employee is not entitled to payment of gratuity.

The maximum amount of gratuity payable to an employee shall not exceed twenty

months wages.

Forfeiture of gratuity : (Sec. 4(6) The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage to the property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused. The gratuity payable to an employee shall be wholly forfeited if the services of such employee have been terminated for - (a) his riotous or disorderly by conduct or any other act of violence of his part or (a) any act which constitutes an offence involving mortal turpitude, provided that such offence is committed by him in the course of his employment.

Thus the law provides for the forfeiture of the gratuity in case of misconduct of the employee. Depending upon the nature of the misconduct sometime complete forfeiture results and yet at other times only partial forfeiture results

Nomination

The rules relating to nomination are contained in Sec.6 of the Act. They are as follows:

1. Each employee who has completed one year of service shall make a nomination within thirty days of completion of one year of service.

2. An employee may in his nomination, distribute the amount of gratuity payable to him under this act amongst more than one nominee.

3. Where an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more member of his family, In order to protect the interest of his family, it has been specifically provided that any nomination made by such employee in favour of a person who is not a member of his family shall be void.

4. At any time a nomination may be modified by an employee after giving a written notice to his employer of his intention to do so.

5. If a nominee predeceases the employee, the interest of the nominee shall revert to the employee. The employee shall then make a fresh nomination in respect of such interest.

Application to controlling authority:

1) if any employer refuses to accept a nomination or to entertain an application for payment of gratuity or,

2) rejects eligibility to payment of gratuity or

3) specifies an amount of gratuity less than what is payable or,

4) having received on application for payment of gratuity, fails to issue any notice

within fifteen days, the employee or his nominee or legal heir within ninety days of the occurrence of the cause, amy apply to the controlling authority for issuing direction under Sec. 7(4).

Powers of Controlling authority: The controlling authority for the purpose of conducting an inquiry under the Act, regarding payment of gratuity or admissibility of any claim or as to the person entitled to receive the gratuity, shall have the same powers as are vested in a court under the code of Civil procedure, 1908. It shall have powers in respect of the following matters, namely,

a) enforcing the attendance of any person or examining him on oath;

b) requiring the discovery and production of documents.

c) receiving evidence on affidavits.

d) issuing commission for the examination of witnesses. (Sec.7(5) Appeal (Sec.7(7). Any person aggrieved by an order of the Controlling authority may prefer an appeal to the appropriate government or such other authority as may be specified by the appropriate Government in this behalf. Such appeal must be made within Sixty days from the date of the receipt of the order.

The appellate authority after giving the parties to the appeal a reasonable opportunity of being heard may confirm, modify of reverse the decision of the controlling authority (Sec.7(8)).

Application for gratuity (Sec.7) : An employee who is eligible for payment of gratuity under the Act, or any person authorised an writing to act on his behalf, shall send an application for payment of gratuity to the employer ordinarily within thirty days from the date the gratuity became payable. However when he date of superannuation or retirement of an employee is known the employee may apply to the employer before their days of the date of superannuation or retirement.

As soon as gratuity becomes payable the employer shall determine the amount of gratuity and given notice in writing to the person to whom the gratuity is payable. A notice must be given to the controlling authority specifying the amount of gratuity so determined, whether and application for payment of gratuity has been made or not these, things have to be done by the employer. The employer, must arrange to pay the amount of gratuity within such time as may be prescribed, to the persons to whom the gratuity is payable.

Dispute as to gratuity: If there is any dispute as to the (a) amount of gratuity payable to an employee or (b) admissibility of any claim or (c) person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

Where there is a dispute with regard to any of these matters the employee may make an application to the controlling authority for taking necessary action. After due inquiry the controlling authority shall determine the amount of gratuity payable to the employee. If as a result of such inquiry any additional amount is found to be payable by the employer, he shall direct he employer to pay the additional amount. The controlling authority shall pay the amount deposited including excess amount to the person entitled there to.

Recovery of gratuity: (Sec. 8) If the amount of gratuity is not paid by the employer, within the prescribed time, to the person entitled thereto, the latter shall make an application to the Controlling authority. On receipt of the application from the aggrieved person the controlling authority shall issue a certificate for that amount to the Collector. The Collector shall recover the amount as arrears of revenue together with compound interest at the rate of nine percent per annum from the date of expiry of the prescribed time and pay the same to the person entitled thereto.

Penalties: (Sec.9) -An employer who contravenes or makes default in complying with any of the provisions of the Act or any rule, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to Rs.1000 or with both. Where the offence relates to non-payment of gratuity, the employer shall be punishable with imprisonment for term which shall not be less than three months.

Suggested Question

Explain the rules relating to determination and recovery of the amount of gratuity under the Payment of Gratuity Act, 1972.

LESSON - 6

MEANING OF HUMAN RIGHTS AND THEORIES OF HUMAN RIGHTS

The origin of human rights can be traced to the principle of Natural law. Natural law and human rights reside inherently form the birth of human rights in the society. These rights must be recognized by the society. The human rights are inalienable. It is enjoyed in whole by the individual.

The study of human rights occupies a very important place in the disciplines of Public Administration and Political Science. Human rights are regarded as basic principles in the functioning of democracy. In the international level also human rights occupies a very important place. For every individual at the national and international level human rights are essential. It must be preserved and protected.

The term human rights indicates both their nature and their source: they are the rights that one has simply because one is human. They are held by all human beings, irrespective of any rights or duties one may (or may not) have as citizens, members of families, workers, or parts of any public or private organization or association. In the language of the 1948 declaration, they are universal rights. If all human beings have them simply because they are human, human rights are held equally by all. And because being human cannot be renounced, lost or forfeited, human rights are inalienable. Even the cruelest torturer and the most debased victim are still human beings.

What exactly does it mean to have a right? In English "right" have two principal moral and political senses. "Right" may refer to what is right, the right thing to do. Thus we say that it is right to help the needy or wrong (the opposite of right) to lie, cheat, or steal. "Right" may also refer to a special entitlement that one has to something. In this sense we speak of having, claiming, exercising, enforcing, and violating rights. There are many things to which people do not have a (human) being to have or enjoy, for example, to be treated with consideration and respect by strangers or to have the chance to develop one's artistic abilities.

Both rights and consideration of righteousness create relations between people who have a duty and people who are owed or benefit from that duty. Rights, however, involve a special set of social institutions, rules, or practices. Rights place right holders and duty bearers in a relationship that is largely under the control of the right holder, who ordinarily may exercise his right more or less as he sees fit. Further more, claims of rights ordinarily take priority over ("trump") other kinds of demands, such as utility or righteousness.

Rights do not have absolute priority over other considerations. They do, however, ordinarily take prima facie priority. Right holders do not have absolute discretion in how they exercise their rights. Discretionary exercise, however, is a central and

distinguishing feature of rights. In fact, the power and control of rights in ordinary circumstances are precisely what makes them so valuable to right holders.

Human rights are a special type of right. In their most fundamental sense, they are paramount moral rights. Hum~; rights are also recognized in international law. Most countries also recognize many of these rights in their national constitution, legislation, or legal practice. As a result, the same "thing" for example, food, protection against discrimination, or freedom of association often is guaranteed several different types of rights.

One "needs" human rights principally when they are not effectively guaranteed by national law and practice. If one can secure food, equal treatment, or free association through national legal processes, one is unlikely to advance human rights claims. One still has those human rights, both they are not likely to be used (as human rights), for example, in the Untied States racial discrimination is prohibited by both constitutional and statutory law. Protection against discrimination is prohibited on the basis of sexual preference is much less clearly established in most jurisdictions. Therefore, gay rights activates claim a human right to non-discrimination with considerable frequency. Racial minorities, by contrast, more often claim legal and constitutional rights "civil rights".

The language of human rights is fundamentally that of the oppressed or dispossessed. The principal use of human rights claims is to challenge or seek to alter national legal or political practices. Claims of human rights thus aim to be self-liquidating. To assert one's human rights is to attempt to change political structures and practices in ways that will make it no longer necessary to claim those rights (as human rights).

Human rights thus provide a moral standard of national political legitimacy. They are also emerging as an international political standard of legitimacy. Only when citizens no longer need to assert their human rights regularly against their government is that government likely to be considered legitimate in the contemporary world.

Human rights are fundamental rights, which are very much essential for leading a normal life in the society, because it provides the individuals the freedom to have comfort and happiness. Rights are conditions of social life in the society. Rights only help every man to achieve freedom. These rights are guaranteed by the state. Another important fact here to be noted here is rights are not absolute and are subject to reasonable restrictions.

For systematic comparative analysis, a careful conceptualization of rights needs to be undertaken, the distinction is between civil liberties, civil rights, and human rights. Civil liberties refers to rights of persons vis-a-vis government. These include freedom of speech, freedom of association and assembly, freedom of religions, rights of conscience, and rights to duê process under law.

Civil rights in the United States is identified with the struggles of black and other ethnic minorities for equal participation in the political and social life of the country. In early writings and in some comparative work, civil liberties and civil rights are used interchangeably. Human rights refers broadly to civil rights and to civil liberties, but also to a wide range of emerging rights that include housing, jobs, and health services. Conceptual definition has its corollary in the area of operational definition.

Various social researchers have used a wide variety of operational definitions and different indices or scales, to define the abstract concepts of human rights. Gerald Laski in his 1961 survey of Detroit, Michigan, used four questions concerning freedom of speech as part of a long interviews. Laski also asked respondents whether they felt the government should make laws forbidding gambling, or moderate drinking, birth control, and Sunday business. In 1954, Samuel Stouffer relied on open-ended questions to summarise given options. Stouffer combined the answers to obtain scales of attributes towards civil liberties. Much of the research conducted in the United States has focused on the subject of support for the Constitution has shown some relation between social class in America in the post-revolutionary era and desire for strong or limited government, depending upon the perceived self-interest of different social classes.

In India

The term "Dharma" etymologically means which upholds, supports and nourishes the society. It maintains stability of the social order and promotes well being and progress of the mankind. It relieves from ignorance, fear, disease and other evils and cherishes and moulds fellow feeling brotherhood and amity and other good feelings. It influenced substantially social, economic and political life and seemed to have moulded and welded into a social order.

The principles of Dharma show that human rights are valuable and eternal. These are identified and are recognized in India. Civilization from time immemorial as the basic conditions for peaceful and progressive life. These are the values included in the human rights subsequently incorporated in the Universal Declaration of Human Rights and also in various Fundamental Rights contained in Part III of the Constitution of India.

Dharma was deeply intermingled with political, economic and social activities. The various purposes of state administration or government were to ensure smooth functioning of Dharma and economic and spiritual well being of the individual. The King or Head of the State was mainly responsible for providing adequate facilities for material advancement and also to spiritual and ethical well being of people.

Dharma or righteous conduct ensures happiness among the people leading to the path of Dharma, The people are overpowered by sensual desires, Passion and Greed.

Manu has, therefore, laid down tri-varga i.e., Dharma, Artha and Kama for promoting welfare and happiness among the people. This is the basic philosophy of Indian life and this doctrine was introduced to strike a balance between the interest of individuals and that of public. The objective was to secure right to happiness through supremacy of Dharma over Artha.

(i) Freedom of thought, conscience and religion,

(ii) Right to access to health care services with state aiming to reduce infant and child mortality and abolish traditional practices, prejudices to health;

(iii) Right to adequate standard of living and social security;

(iv) Right to educate with states making primary education compulsory and free;

v) Protection from involving in the illicit production, trafficking and use of narcotics, drugs and psychotropic substances; and

vi) Protection from sexual exploitation and abuse.

The Constituent Assembly entrusted with the responsibilities of Drafting the Constitution of India. It took note of engaged in the stupendous task of developing the basic and the Universal Declaration of Human Rights of UN in 1948 and incorporated many human rights as Citizens' Fundamental Rights in the Constitution. Right to Equality before Law (Art. 14), Right to Freedom from discrimination (Art. 18) Right to Freedom of Speech, and Expression (Art. 19), Right to Assemble Peacefully (Art. 21) and Prohibition of Employment of Children in Hazardous Occupation (Art. 24) can be mentioned as relevant to the issue.

The chapter of Fundamental Rights covers the civil and political rights including the Right to Judicial Interference. The chapter was also included as a Directive Principle of State Policy requiring the state to promote and protest the rights of the most vulnerable sections of our society. The Directive Principles are meant to give a direction to the policy and actions of the Government so as to progressively realize the objectives of improving the standard of living and quality of life for all its Indian citizens. These chapters taken substantially contain the essence of human rights and the mode of their realization as stated in the Declaration of human rights.

In a sense, with the constitutional provisions the center and state governments have enacted many laws and regulations to preserve and safeguard the basic human rights. For example, Code of Criminal Procedure, Indian Penal Code and the Evidence Act are meant for ensuring human rights of the Indian citizens. Besides, Government has also setup various national institutes, for the promotion and protection of the interest of the most vulnerable sections of the society. These are the National Commission for Scheduled Castes and Scheduled Tribes, National Commission for Women and the Minorities Commission. These Commissions have been reviewing the socio-economic

conditions of these groups and related government policies, legislation to ensure that their status in the society can be progressively strengthening these national institutes. The National Police Commission and the Law Commission have also made much contribution to the law and order system of the country for protection of the rights and freedom of all citizens.

The Government of India has been continuously reviewing the statutes regarding the rights of the individual. For example, the offences against the members of the Scheduled Castes and Scheduled Tribes, SC and ST (Prevention) of Atrocities Act, 1989 was enacted and therein it is mentioned that if public servants willfully neglects his duties under the Act, he will be liable for protection and imprisonment. Similarly, provisions have been made under the IPC defining the offence of rape in custody and against the accused. Similarly, Civil Rights Act, 1976, Dowry Prohibition (Amendment) Act, 1989. Probation of Offenders Act and the Juvenile Justice Act has also been enacted to protect the rights of the most vulnerable sections. Besides, deterrent punishment has been provided for violation of these laws particularly for those who are appointed for protection of such rights. Our judiciary has the Constitutional mandate to be the custodian of the fundamental rights of the individual and has consistently acted with zeal to protect these rights. Indian judiciary has also evolved a unique legal process known as "Public Interest Litigation" for initiating the proceedings for redressal. An individual or group can bring the offence to the attention of the judiciary and High Courts and the Supreme Court of India can take cognizance of such offences and start the judicial process to provide remedial measures. The Parliament and the State legislatures have also been quite vigilant about the violation of human rights. This has helped immensely not only in creating public awareness, but also in ensuring prompt action against those who are guilty of committing such offences. India also is proud of having an independent and vigilant press that has always acted as a watch dog for the protection of human rights particularly in case of violation of human rights are mainly based on pronouncement of the judiciary and reports in the press.

Model Question

Discuss the development of Human Rights.

THEORIES OF HUMAN RIGHTS

Various theories of rights emerged during the different phases of the development to rights. The main theories are the theory of natural rights, legal theory of rights, historical theory of rights, idealist theory of rights and social welfare theory of rights.

Theory of Natural Rights

The theory of natural rights was very popular during the seventeenth and eighteenth centuries. This theory treated the rights of man as "self-evident truth". Those rights

were not granted by the state but came from the very nature of man. The theory of natural rights is based on the liberal theory of the origin of the state from social contract. Certain rights were enjoyed by man in the state of nature, before the formation civil society itself and those were the natural rights of man and those must be respected and protected by the state. John Locke was the strongest supporter of the theory of natural rights. His theory of social contract which established a limited constitutional government, his theory of political power as a trust in the hands of the rulers, his theory of revolution against the government which violates the trust by attacking the natural rights of man, all flow from his theory of natural rights. The view of Locke was that men were born free and came into the world with certain natural rights. Among the natural rights, Locke considers the right to life, liberty and property as the most important. Those natural rights flow from the strong desire of man for preserving his life and being Locke gave prime importance to the right to property.

Thomas Paine (1737-1809) view was that every generation should be free to think and act for itself. The rights to liberty, property, security and resistance to oppression derived their sanction from the natural rights "pre-existing in the individual". The theory of natural rights of T.H. Green view was that the rights of man do not emanate from a transcendental law but came from the moral character of man himself. Rights depend on recognition which depends upon the moral consciousness of the community and not the state. Green was concerned not with legal rights but with ideal rights. The theory of natural rights inspired the American and French Revolutions. The American Declaration of Independence (1776) was in those words: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life,

Liberty and pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to affect their safety and happiness".

The supporters of this theory are hostile' to the state and maintain that rights are pre-political. The legal theory of rights shows that without the protection of laws, enforcement by courts and guarantee by the Constitution, rights are futile. Rights cannot be enjoyed in a vacuum. There must be some authority to protect and enforce them. Most of the advocates of natural rights do not accept the logical relationship between rights and duties. The fact is that without duties, there cannot be any rights.

The Legal Theory of Rights

According to this theory, all rights of men depend on the state for their existence.

There can be no right in the proper sense of the term unless it is so recognised by the state. There are no absolute rights. There are no rights inherent in the nature of man as such. Rights are relative to the law of the land and they vary with time and space. Rights have no substance until they are guaranteed by the state. There were no rights prior to the state and they came into existence with the state itself. It is the state which declares the law and thereby guarantees and enforces rights.

Hobbes was the first to propound the legal theory of rights. He established the relation between rights and authority and maintained that without authority, there could be no rights at all. This theory was fully developed by Bentham, Austin, Ritchie and Salmond. Bentham was the greatest champion of the legal theory of rights. The legal theory of rights entrusts three functions to the state with regard to rights. The first function is to determine the rights. The second function is to define the scope of rights. The third function is to remove hindrances which come in the way of the fulfillment of rights. However, this theory does not maintain that rights are the creation of the state and depend upon the state. It simply maintains that rights are no rights without proper recognition and protection by the state.

The view of Spencer is that the state does not create rights. It exists in order to maintain rights. N. Wilde writes, "The law does not create our rights, but only recognizes them and protects them. The rights themselves exist whether they are thus legalized or not. They are enforced because they are rights and not rights because they are enforced".

Another defect with the legal theory of rights is that it does not cover the whole scope of rights. Whether rights are derived from history, customs or laws, they all require a moral basis. The legal theory of rights does not enable us to decide whether the rights that are recognized are rights which ought to be recognized.

Historical Theory of Rights

According to this theory, rights are a product of long historical evolution of society and are based on traditions and customs. With the change in time and circumstances, rights also change. Rights ate the crystallization of customs and traditions. This theory originated in the eighteenth century conservative political thought. Its upholders defended evolutionary changes and condemned revolutionary changes. At best, they supported a revolution inspired by the established order of society.

Edmund Burke (1729-1797) who is considered to be greatest champion of the historical theory of rights. According to him, political institutions form a vast and complicated system of prescriptive rights and customary observations. Those practices grow out of the past and adapt themselves with the present without any break in the continuity. Burke criticised the French Revolution as being an injudicious exercise in the direction of a struggle for liberty, equality and fraternity but praised the Glorious

Revolution of 1688 as a re-assertion of the centuries-old right of the Englishmen. The supporters of the historical theory of rights were Savigny (1779-1861). Sir. Henry Maine (1822-1888), Ranke and Burgess. Those writers were jurists who raised their voice of protest against the natural law theories and the positive law school represented by Bentham and Austin.

According to this theory, rights are the result of historical evolution. While in modern state, rights are recognised and supported by law, in ancient times, rights were based on custom and usage. In course of ages, human beings evolved certain usages, traditions and customs for the common good and those became the basis of rights of individuals. It cannot be accepted that all rights are the result of well-established customs. Only some rights are the result of historical evolution. Certain rights are created by law and they do not have history as a source of their origin. All products of history are not regarded as rights or continued as rights. Slavery was a recognised institution in Greece, but today no state supports slavery as a right. Likewise, the customs of Sati, Devdasi and untouchability are not recognised as rights today as those were based on injustice and oppression. The state had to ban those customs in order to ensure that rights became the vehicles of justice and not of tyranny. Hocking writes, "History cannot be ignored, but history cannot be relied on alone"

The Idealist Theory of Rights

According to the Idealist or personality theory of fights, human beings need congenial external conditions for the development of their personalities and those conditions are created by the state. The theory links rights with the moral development of man and looks at rights essentially from the ethical point of view. Without these conditions, it is not possible for the individual to live and realize his full stature. These opportunities are rights to be enjoyed by the individual in society. Those rights are to be understood in a social context. Rights are linked with the individual good and the common good of all.

Moderate idealists like Kant and Green speak not in terms of the growth of individual personality alone, but also in terms of the common good. Conditions for the ethical and moral development of man are created by the state. According to Green, human consciousness postulates liberty, liberty involves rights and rights demand the state. According to Bosanquet, rights are the conditions for the realization of the end of the state. They are the claims recognised by the state. The view of Krause, Henrici and Wilde is that without rights man cannot become his best self.

Critics point out that there are certain defects in the theory. It is vague and objective standards cannot be applied. Just as the greatest happiness of the greatest number as expounded by the Utilitarians cannot be measured, the conditions supposed to be aiming at the moral perfection for the individual cannot be assessed.

Social Welfare Theory of Rights

According to this theory, rights are crated by society and they aim at realizing social welfare. The contention of this theory is that the rights of individuals are -limited by social welfare. No individual can be given rights against the welfare of society. Rights are not given to anti-social individuals. They are always restricted in the interests of society. Individuals are given rights so that they may contribute to the common good. An individual who does not perform his social functions, cannot claim any right. This theory emphasis social character of rights. It is based on the demands of social justice and values of social welfare, the great welfare. The great protagonists of this theory are Roscoe Pound, Chafee and Laski.

Critics point out certain shortcomings in this theory. The maxim of social 'welfare is highly ambiguous. In actual practice, it may mean different things to different persons. In the name of social welfare, governments are arming themselves with excessive powers which result in the erosion of the rights of the individual. In the name of social welfare, the Parliament and State Legislatures in India have passed many laws eroding the fundamental rights of the individual.

Model Question

Bring out the different theories of Human Rights.

LESSON - 7

INTERNATIONAL ORGANISATION AND HUMAN RIGHTS

The Human Rights provisions of the Charter of the United Nations and the law and institutions that have been developed within UN framework are mentioned in this chapter. These legal norms and institutions derive either from the Charter itself or the human rights treaties adopted under the auspices of the UN.

The UN-Charter

Modern international human rights law is a post-world war II phenomenon. Its development can be attributed to the monstrous violations of human rights of the Hitler era and to the belief that these violations and possibly the war itself might have been prevented had an effective international system for the protection of human rights existed in the days of the League of Nations.

The International Human Rights cause was eloquently espoused as early as 1941 by President Franklin D. Roosevelt. In his famous upon four essential human freedoms". These he identified as "freedom of speech and expression", "freedom of every person to worship God in his own way", "freedom from want", and "freedom from fear". Roosevelt's vision of "the moral order", as he characterized it, Became the clarion call of the nations that fought the Axis in Second World War and founded the United Nations.

San Francisco Conference and Human Rights

The Human Rights provisions which ultimately found their way into the Charter of the United Nations fell far short or the expectations created by Roosevelt's vision and the wartime rhetoric. That was to be expected, for each of the principal victories powers had troublesome human rights problems of it is own. The Soviet Union had its Gulag, the United States its de jure racial discrimination, France and Great Britain their colonial empires.

Given their own vulnerability as far as human rights were concerned, it was not in the political interest of these countries to draft a Charter that established an effective international system for the protection of human rights, which is what some smaller democratic nations advocated. Although the big powers prevailed to the extent that the San Francisco Conference produced no protective system as such, the UN Charter did nevertheless lay the legal and conceptual foundation for the development of contemporary international human rights law.

Human Rights in the UN Charter

Universal Declaration of Human Rights.

Adopted and proclaimed by General Assembly resolution 217A(III) of 10 December 1948

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against, tyranny and oppression, that human rights should be protected by the rule of law.

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the people of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

Whereas a common understanding of these rights and freedom is (,f the greatest importance for the full realisation of this pledge.

Now, therefore The General Assembly,

Proclaims the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedom and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the people of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are both free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration,

without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political Jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall he prohibited in all their forms.

Articles 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against; any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Every one is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charges with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed then the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Every one has the right to seek and to enjoy in other countries asylum from persecution.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to many and to found family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with

others.

2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching; practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Articles 20

1. Everyone has the right to freedom of peaceful assembly and association. 2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interest.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. parents have a prior right to choose the kind of education that shall be given their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary of artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedom set forth in this declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible,

2. In the exercise of his rights and freedom, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

The Charter of the United Nationals proclaims the following goal as one of the "purposes" of the UN;

To achieve international co-operation in solving international problems of an economic social, culture, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

The basic obligations of the organization and its Member States in achieving these purposes, these provisions read as follows.

Articles 55

With a view to the creation of conditions of stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal and self-determination of peoples, the Untied Nations shall promote,

a) Higher standards of living, full employment, and conditions of economic and social progress and development.

b) Solutions of international economic, social, health, and related problems, international cultural and educational co-operation and

c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All members pledge themselves to take joint and separate action in co-operation with the organisation for the achievement of the purpose set fourth in Article 56.

Article 56 required Member States "to take Joint and separate action in co-operation with the organisation". to accomplish the objects spelled out in Article 55. To facilitate this co-operation, Article 13(1) of the Charter provides that the General Assembly "shall initiate studies and make recommendations for the purpose of. (b) assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". The Charter confers similar power on the UN Economic and Social Council (ECOSOC). It authorizes the ECOSOC to "make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all" and requires it to "set up commissions in economic and social fields and for the promotion of human rights...

The organisation has over the years succeeded in clarifying the scope of the Member States obligation to "promote" human rights, expanding it and creating UN Charter-based institutions designed to ensure compliance by governments. Today it is generally recognized, for example, that a UN Member State which engages in practices amounting to a "consistent pattern of gross violations" of internationally guaranteed human rights is not in compliances with its obligations to "promote... universal respect for, and observance of..." these rights and that, consequently, it violates the UN Charter.

The UN has sought to enforce this obligation with resolution calling on specific states to stop such violations and by empowering the UN Commission on Human rights an its subsidiary bodies to establish procures to review allegations of violations.

THE INTERNATIONAL BILL OF HUMAN RIGHTS

The International Bill of Human Rights consists, in addition to the human rights provisions of the UN Charter, of the Universal Declaration of Human Rights, the two International Covenants on Civil and political Rights. Essential Rights of Man" be appended to the Charter were made but not acted upon at the San} Francisco Conference. These efforts were revived at the first meeting of the United Nations.

Shortly therefore, its newly created commission of Human Rights was charged with drafting "an international bill of human rights". The commission soon recognized that it would be relatively easy to adopt the text of declaration, but that it would prove much more difficult to reach agreement on the wording of a legally binding treaty. The Commission decided, therefore, to work first on a declaration and to take up immediately afterwards the preparation of one or more draft treaties. This approach produced the Universal declaration of Human Rights, which was adopted the by the UN General Assembly in December 1948. It took more before the treaties - the two Covenants and e Optional Protocol were adopted by the Assembly and opened for signature.

The Universal Declaration of Human Rights

The Universal Declaration is the first comprehensive human rights instrument to be proclaimed by a universal international origination. Because of its moral status and the legal and political importance it has acquired over the years, the Declaration ranks with the Magna Carta, the French Declaration of the Rights of Man and the American Declaration of Independence as a milestone in mankind's struggle for freedom and human dignity. Its debt to these great historic documents is unmistakable, "All human beings are born free and equal in dignity and rights", proclaims Article 1 of the Universal Declaration, and Article 28 adds "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized"

The rights and freedoms

The Universal Declaration proclaims two broad categories of rights: civil and political rights, on the one hand, and economic 'social and cultural rights on the other. Its catalogue of civil and political rights includes the rights to life, liberty, and security of person; the prohibition of slavery, of torture and cruel, in manor degrading treatment; the right not to be subjected arbitrary arrest, detention or exile, the right to a fair trial in both civil and criminal matters, the presumption of innocence and the prohibition against the application of exposit facto laws and penalties.

The Declaration recognizes the right to privacy and the right to own property. It proclaims freedom of speech, religion, assembly and freedom of movement. The latter embraces the right of everyone "to leave any country, including his own, and to return to his country". Also guaranteed are the right "to seek and to enjoy in other countries asylum from persecution" and the right to a nationality. Important political rights are proclaimed in Article 21 of the Declaration, including the individual's right "to take part into the government of his country, directly or through freely chosen representatives". That provision also decides that the "will of the people shall be the basis of the authority of government" and requires "periodic and genuine elections" by universal suffrage.

The catalogue of economic social and cultural rights proclaimed in the Declaration starts with the proposition, express in Article that

Everywhere, as member of society... is entitled to realization, through national cooperation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality. The declaration then proclaims the individual's right to social security, to work, and to "protection against unemployment", to "equal pay for equal work", and to :just an favourable remuneration. The right "to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay" is recognized in Article 24. Article 25 of the declaration states that everyone has the right "to a standard of living

adequate for the health and well - being of himself and of his family". It also recognizes the individual's right" to security in the event of unemployment, sickness, disability, widowhood, old age or other, lack of livelihood in circumstances beyond his control.

The right to education is dealt with in Article 26 of the Declaration which provides, among other things, that education shall be free at least in the elementary and fundamental stages". Article 26 also declares that Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance, and friendship among all nations, racial or religious groups, and shall further the activities of the United States for the maintenance of peace.

Article 27 of the Declaration deals with cultural rights and states Inter alias that every human being has "the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits".

The Declaration recognizes that the right it proclaims is not absolute. It permits a State to enact laws limiting the exercise of these rights, provided their sole purpose is to secure "due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society"

A government's authority to impose such restrictions is further limited by Article 30, which provides that "nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms" proclaimed in the Declaration. In other words, a government would violate the Declaration if its reliance on the power to impose lawful restrictions or limitations on the exercise of certain human rights was a mere pretext for denying these rights.

Legal effect and political importance

The Universal Declaration is not a treaty. It was adopted by the UN General Assembly as a resolution having no force of law. Its purpose, according to its preamble, is to provide "a common understanding" of the human rights and fundamental freedoms referred to in the UN Charter and to serve "as a common standard of achievement for all peoples and all nations".

In the decades that have elapsed since its adoption in 1948, the Declaration has undergone a dramatic transformation. Today few international lawyers would deny that the Declaration is a normative instrument that creates at least some legal obligations for the Member states of the UN. The dispute about its legal character concerns not so much claims that it lacks all legal force. The disagreement focuses instead on questions about whether all the rights it proclaims are binding and under what circumstances, and

on whether its obligatory character derives either from its status as an authoritative interpretation of the human rights obligations international law, or its status as a general principle of law.

The process leading to the transformation of the Universal Declaration form a non-binding recommendation to an instrument having a nonnative character was set in motion, in part at least, because the effort to draft and adopt the Covenants remained stalled in the UN for almost two decades. During that time the need for authoritative standards defining the human rights obligations of UN Member Status became ever more urgent As time went on, the Declaration came to be utilized with ever greater frequency for that purpose. Whenever governments, the UN or other international organizations wished to invoke human rights norms or condemn their violations, they would refer to and draw on the Declaration as the applicator standard. Thus the Declaration came to symbolize what the international community means by "human rights", reinforcing the conviction that all governments have an "obligation" to ensure the enjoyment of the rights the Declaration proclaims.

The legal significance of this process has been analysed in at least three ways. Some international lawyers and government have contended that the UN's consistent reliance on the Universal Declaration when applying the human right provision of the UN Charter compels the conclusion that the Declaration has come to be accepted as an authoritative interpretation of these provisions. According to this view, the Member States of the UN have agreed that they have an obligation under the charter to promote "universal respect for, and observance of' the rights which the declaration proclaims. Whether a state can be deemed to violate this obligation when it denies all, some or even only one if these rights will then depend upon the interpretation given to the undertaking contained in Article 55 of the Charter read together with Article 56 Another view that is gaining increasing support sees in the repeated reliance on and resorts to the Universal Declaration by governments and inter governmental organizations the requisite state practice which is capable of giving rise to customary international law. This theory leads to the conclusion that the Declaration or, at the very least, some of its provisions, have become customary international law.

A careful analysis of the relevant state practice suggests, however, that not all the rights proclaimed in the Declaration have to data acquired this status. This is why the Restatement (Third) characterizes only some rights proclaimed in the Universal Declaration as customary international law. Without claiming to be exhaustive, it lists the following governmental practices as violating international law: genocide, slavery, murder or causing the disappearance of individuals, torture or other cruel, inhuman or degrading treatment or punishment, prolonged arbitrary detention, systematic racial discrimination, and insistent patterns of gross violations of internationally recognized human rights.

One distinguished commentator has combined the two aforementioned theories by advancing the following view:

The Declaration is now considered to be an authoritative interpretation of the U.N. Charter, spelling out in considerable detail the meaning of the phrase "human rights and fundamental freedoms", which Member States agreed in the Charter to promote and observe. The Universal Declaration has jointed the Charter. As part of the constitutional structure of the world community, the Declaration, as an authoritative listing of human rights, has become a basic component of international customary law, binding all states, not only members of the Untied Nations.

It remains to be seen whether this characterization of the Universal Declaration will gain general acceptance, particularly if it is understood as imposing on all states an immediate obligation to conform to its every provision. Some commentators are now putting forth a third theory which characterizes various international human rights norms, including the Universal Declaration as being reflective of a dynamic modem aspect of general principles of law. Whether the theory, it is today clear that the international community attributes a very special moral and normative status to the Universal Declaration that no other instrument of its kind has acquired.

International Covenants on Human Rights

The Covenant on economic, Social and Cultural Rights and the Covenant on Civil and Political Rights were adopted by the UN General Assembly and opened for signature in December 1966. Another decade passed before 35 states the number required to bring the Covenants into fore ratified both instruments. This number as increased significantly in recent years and by the end of 1994 grew to some 130 States Parties. Their United States ratified the Covenant in 1992. Being treaties, the Covenants create binding legal obligation for the States Parties.

Therefore, as between them issues relating to compliance with and the enjoyment of the rights guaranteed by the Covenants are matters of international concern and thus are no longer within their domestic jurisdiction, The Covenants have a number of common substantive provisions. Two of these deals with that might be described as "peoples" or "collective" rights. Article 9(1) of both Covenants proclaims that "all peoples have the right of self determination". Each Covenant established a distinct international enforcement system designed to ensure that the States Parties comply with their obligations.

Model Question

Explain the role of UNO for the protection of Human Rights.

AMNESTY INTERNATIONAL

Amnesty International (AI) is a worldwide movement of people who campaign for internationally recognized human rights. Amnesty International vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

In pursuit of this vision, Amnesty International mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights. In particular, Amnesty International campaigns to:

> free all prisoners of conscience;

> ensure fair and prompt trails for political prisoners;

> abolish the death penalty, torture and other cruel treatment of prisoners;

> end political killings and "disappearances";

> and oppose human rights abuses by opposition groups.

Members

Amnesty International has a varied network of members and supporters around the world. At the latest count, there were more than 1.8 million members, supporters and subscribers in over 150 countries and territories in every region of the world. Although they come from many different backgrounds and have widely different political and religious beliefs, they are united by a determination to work for a world where everyone enjoys human rights.

Activities

Activities range from public demonstrations to letter-writing, from human rights education to fund-raising concerts, from individual appeals on a particular case to global campaigns on a particular issue.

Amnesty International is impartial and independent of any government, pollical persuasion or religious creed. It does not support or oppose any government or political system, nor does it necessarily support the views of the victims whose rights it seeks to protect.

To ensure its independence, it does not seek or accept money from governments or political parties for its work in documenting and campaigning against human rights abuses.

The European Union Office

Amnesty International's European Union office focuses on a range of European Union policies including:

Human rights in European Union Member States and Accession countries; Human rights in European Union foreign policy;

> Security and human rights;

> Asylum and refugee protection;

> Judicial and police co-operation;

> Human rights and the arms trade;

> Co-operation and assistance programs.

In particular the European Union office is funded by the Amnesty International national sections in European Union Member States

Amnesty International is independent of any government, political ideology, economic interest or religion. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights Amnesty International is a democratic, self governing movement. Major policy decisions are taken by an International council made up of representatives from all national sections. Amnesty International national sections and local volunteers groups are primarily responsible for funding the movement. No funds are sought or accepted from governments for Amnesty International work investigating and campaigning against human rights violations.

Annual reports

Each year Amnesty International publishes a report on its work nod its concerns throughout world.

During 2004, the human rights of ordinary men, women and children were disregarded and grossly abused in every comer of the globe. The Amnesty International Report 2005, convening 149 countries, is a detailed picture of these abuses. The report also acknowledges the opportunities for positive change that emerged in 2004, often spearheaded by human rights activists and civil society groups. Whether in a high profile conflict or a forgotten crisis, Amnesty international campaigns for justice and freedom for all and seeks to galvanize public support to builds a better world.

Amnesty International Report 2004

Huge challenges confronted the international human rights movement in 2003. The UN faced a crisis of legitimacy and credibility because of the US-led war on Iraq and the organization's inability to holds states to account for gross human rights

violations. International human rights standards continued to be flouted in the name of the "war on terror", resulting in thousands of women and men suffering unlawful detention, unfair trial and torture-often solely because of their ethnic or religious backgrounds. Around the world, more than a billion people's lives were ruined by extreme poverty and social injustice while governments continued to spend freely on arms.

This Amnesty international Report reflects those challenges. It documents the human rights situation in 155 countries and territories in 2003, and summarizes trends. It reports on areas of work being prioritized and developed by Amnesty International such as violence against women; economic, social and cultural rights; and justice for refugees and migrants and celebrated the achievements of activists in these and other areas. In a dangerous and divided world, it is more than ever that the global human movement remains strong, relevant and vibrant Through its members and allies, Amnesty International remains Committed to revitalizing the vision of human rights as a powerful tool for achieving justice for all.

Amnesty International's publication on women's rights is titled, It's About Time! Human rights are Women Right. As the title indicates, women's claims to human rights are long overdue; Women have functioned as a civilization signifier in the geographical arena for the last two centuries at least In the late nineteenth and early twentieth Century, British and American ideologists argued for the necessity of imperialism as a means to improve the condition of women in colonies in Africa, the Middle East, and South Asia. For example, the publication of Mother India in 1927, by the American author Katherine Mayo, initiated a spirited defense of imperialism in the British press on the grounds it provided upward gender mobility for Indian women.

More recently, in the twenty-first century the use of Afghan women as a signifier of the brutality of the Taliban has put a humane face on military intervention and helped President Bush close the gender gap in his approval ratings. Women's human rights encompass both political and social rights. Till quite recently, women have been "the invisible victims" and "faceless masses filling the backgrounds on the canvasses of terror and hardship", constituting, along with children, the majority of the casualties of war, the world's refugees and displaced people, and the global poor. In the last several decades, however, women's organizations have become highly visible agents in challenging oppressive governments and patriarchal traditions. They have organized campaigns around the world to locate their "disappeared" relatives, for basic services in their communities, for legal representation, for equality in the work-force, for land rights and access to credit, and against torture and domestic violence. We will hear from the specific challenges that women face in China, Japan, Korea, Indonesia, and India. Yung-Chen Chaing, a professor of history at DePauw University, who spoke about how culture shapes women's human rights in China and Japan; Chunghee Sarah Soh, a professor of anthropology at San Francisco State University, describes Korean women's

rights and said It's About Time! Human Rights are Womens' Rights. Peg Sutton, a professor of education at IU, addresses -the constitutional and material complexities of determining the status of contemporary Indonesian women; and Radhika Parameswaran, professor of journalism at IU, reflect on how sectarianism, the state, and gender interest in India, and the role journalism play in advancing women's human rights.

In particular, Amnesty International campaigns to

i) free all prisoners of conscience;

ii) ensure fair and prompt traits for political prisoners;

iii) abolish the death penalty, torture and other cruel treatment of prisoners;

iv) end political killings and disappearances and

v) oppose human rights abuses by opposition groups.

Model Question

Analyse the activities of Amnesty International.

LESSON - 8

INDIAN CONSTITUTION AND HUMAN RIGHTS - DIRECTIVE PRINCIPLES OF STATE POLICY

India, having a broad outlook at the national and international level, especially in the field of human rights included certain fundamental rights in Part III of the Constitution. Indian Constitution is the comer-stone of the nation.

Justice P.N. Bhagwati observed that these fundamental rights represent the basic values cherished by the people of this country since the Vedic times.

Justice N.A. Palkhivala said, "The fundamental rights constitute in material terms the anchor of the Constitution and provide it with the dimension of permanence"

The idea of incorporating fundamental rights was much influenced by the Swaraj Bill of 1895. It was followed by Mrs. Annie Besant Commonwealth of India Bill, and Indian National Congress's Resolution in 1927 and the Nehru Report in 1928, The fathers of Indian Constitution were very much influenced by the Bill of Rights of American Constitution (1776), the French Declaration of the rights of man (1789) and the Irish Constitution (1935). All the rights were analysed thoroughly and they divided them into justifiable and non-justifiable rights. Justifiable rights were those which could be enforced by a Court of Law and were put in Part III of the Constitution were called as "Fundamental Rights". The non-justifiable rights which could not be enforced by a Court of Law were placed in Part IV of the Constitution and were called as "Directive Principles of State Policy".

The following are the fundamental Rights guaranteed to the people by the Constitution. They are:

i) Right to liberty

ii) Right to equality

iii) Freedom to practice any profession or to carry on any occupation, trade or business.

iv) Right to life and personal liberty (Articles 20, 21 and 22)

v) Right to freedom of religion (Articles 25, 26, 27 and 28)

vi) Cultural and Educational Rights (Articles 29 and 30)

vii) Right to property (The 44th Amendment of the Constitution has deleted this right)

viii) Right against exploitation (Articles 23 and 24), and

ix) Right to Constitutional remedies (Article 32)

Under Part IV of the Constitution the following social and economic rights are Directive principles of State policy of administration and too be adapted as such in their legislative and administrative measures these right are:

i) Right to adequate means of livelihood [Article 39(a)]

ii) Right against economic exploitation [Article 39 (b)]

iii) Right of both sexes of equal pay for equal work [Article 39 (d)]

iv) Right to work [Article 41]

v) Right to leisure and rest (Article)

vi) Right to public assistance in case of unemployment old age, sickness and the like (Articles 41 and 42)

But it may be noted that the fundamental rights are enforceable against the State and not against the private individuals with, the exception of the rights guaranteed under Article 15(2), Article 17, Article 23(1) and Article 24.

The fundamental rights cannot be waived. In view of Justice Bhagwati of the Supreme Court as he then was, "Fundamental rights are inviolable and as expressly enacted in the Constitution. Cannot be waived by a citizen, the Constitution adopted by our founding fathers is sacrosanct and it is not permissible to tinker with those fundamental rights by any ratiocination or analogy of the decisions of the Supreme Court of the United States of America. It is not open to a citizen to waive his fundamental rights which have been for the first time enacted in the Constitution and it would be a sacrilege to whittle down these rights".

1. Right to equality (Articles 14, 15 and 16)

The right to equality and equal protection of the laws is not an unrestricted right. Reasonable restrictions may be impose upon this right. This world is full of inequalities, social, economic and political. Such inequalities still exist in the society. Resort to fundamental right of equality before law is made occasionally to prevent discrimination and sometimes to uphold discrimination as a reasonable restriction on the right of equality.

Equality before law

"The State shall not deny any person equality before the law and the equal protection of the laws".

"PROHIBITION AGAINST DISCRIMINATION ON GROUNDS OF RELIGION, RACE, CASTE, SEX OR PLACE OF BIRTH"

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

"EQUALITY OF OPPORTUNITY IN MATTER OF EMPLOYMENT" that

1. There shall be equality of opportunity for all citizens in matters realign to employment or appointment to any office under the State.
2. No citizen on grounds only of religion, race, caste, sex place of birth, residence or any of them be ineligible for, or discriminated against in respect of any employment of office under the State.

2. Right to Six Freedoms - Article 19

Article 19 provides for protection of certain rights regarding freedom of speech, etc. These are

1. All citizens shall have the right

a) To freedom of speech and expression

b) To assemble peaceable without arms

c) To form association or units

d) To move freely throughout the Union of India

e) To reside and settle in any part of the territory of India

f) Right to property has been omitted by the 44th Amendment of the constitution (20.6.1979) and new only a right.

g) To practice any profession, or to carry on any occupation trade or business. Certain restriction have been imposed on the operation of these freedom.

3. Right to Life and Personal Liberty (Articles 20, 21 and 22)

ARTICLE 20. PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES

1. No person shall be convicted of any offence except for violation of a law in force at the time of commission of the act charged as an officer nor be subjected to penalty greater than which might have been inflicted under the law in force at the time of the commission of the offence.
2. No person shall be prosecuted and punished for the same offence more than once.
3. No person accused of any offence shall be compelled to be a witness against himself.

ARTICLE 21. PROTECTION OF LIFE AND PERSONAL LIBERTY

Article 21 provides that no person shall be deprived of his life and personal liberty except according to procedure established by law. The following rights flow the provisions of Article 21 of the Constitution

A. Right to be free from torture on maltreatment

B. Right to get legal aid in certain circumstances,

C. Right to speedy trial, and

D. Right to compensation of the victim and the accused.

PROTECTION AGAINST ARREST AND DETENTION IN CERTAIN CASES

Article 22 of the Constitution provides that

1. No person who is arrested shall be detained in custody without being informed, as soon as may not be, on the grounds of such arrest not shall be denied the right to consult and to be defended by a legal practitioner of his choice.
2. Every person who is arrested and detained in custody, shall be produced before the nearest Magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey room the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

The procedure to be followed by an Advisory Board in an inquiry

This Article consists of two parts clauses 1 and 2 apply to persons arrested or detained under a law otherwise than a preventive detention law, (clauses 4. To 7) Apply to persons arrested or detained under a preventive detention law.

This Article provides protection to a person arrested and detained in police custody, laying down that

i. such person must be informed of the grounds of detention as soon as possible;

ii. He must be produced before a Magistrate within twenty four hours of his arrest

iii. He is entitled to consult and to be defended by an Advocate of his choiceand

iv If such a person is to be detained for a period of more than twenty-four hours, then it can be done only with the authority of the Magistrate.

The requirement of clause of this Article is that an arrested person must be informed as soon as may be of the grounds of arrest. This is an imperative requirement. If information is not given to him within reasonable time, then there must be some valid reason for the dela. Under this clause it is not essential that the arrested person should be furnished with full detail of the office. But nevertheless, the information furnished to him should be such as to enable him to know as to why and for what offence he has been arrested. It would to be sufficient to inform him that he has been arrested under such and such section of an Act or ordinance, or Regulation of law, but he must be given such grounds of arrest as are intelligible. The court can go into the question of sufficiency

of the grounds furnished to him or to other circumstances of the case. If the court finds that the grounds are insufficient or no proper grounds are furnished to him, the detention would become unlawful and the detente would be entitled to be released forthwith.

Even when a person is released on bail, the obligation of the government to furnish him with the grounds of arrest does not come to an end. In this connection it may that Article 22 has been enacted, on the one side it affording him an earliest opportunity to remove any mistake, misapprehension, or misunderstanding in the mind of the arresting authority, and on the other side, to enable the detente to prepare for his defense and to move the Court for a writ of Habeas Corpus or bail. The requirement of producing the arrested person before a Magistrate within twenty - four hours is mandated with a view to avoid any miscarriage of justice, or arbitrary arrests or victimizing arrest. The executive action of arrest is required to be approved by a court at the earliest possible opportunity. This requirement is so stringent that if a person is arrested without a warrant issued by a Magistrate, he should not be produced before the same Magistrate who issued warrant of arrest, because of the principle of natural justice that no one can judge of his own cause.

4. Right to Freedom of Religion (Articles 25, 26, 27 and 28)

FREEDOM OF CONSCIENCE AND FREE PROFESSION: PRACTICE AND PROPAGATION OF RELIGION

Article 25 provides that

1) Subject to public order, mortality and health, and to the other provisions of this part, all persons are equality entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

2) Nothing in this Article shall affect the operation of any existing law or prevent the state from making any law:

a) Regulating or restricting any economic, financial, political or other secular activity, which may be associated with religious practice.

b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

FREEDOM TO MANAGE RELIGIOUS AFFAIRS

Article 26 provides that every religious denomination or any section thereof shall have right.

i) To establish and maintain institutions for religious and charitable purpose

ii) To manage its own affairs as matters of religion

iii) To own and acquire movable and immovable property; and

iv) To administer such property in accordance with law..

FREEDOM AS TO PAYMENT OF TAXES FOR PROMOTION OF ANY PARTICULAR RELIGION.

Article 27 of the Constitution provides that no person shall be completed to pay any taxes, which are especially appropriate in payment of expenses for the promotion or maintenance of particular religions.

The provision of this Article aims at to check the state from imposing any tax for promotion of any particular religions in order to save the secular character of the state and not to become a theocratic state like an Islamic state.

FREEDOM AS TO ATTENDANCE AT RELIGIOUS INSTRUCTION OF RELIGIOUS IN CERTAIN EDUCATIONAL INSTITUTIONS:

Article 28 provides that

1. No religious instruction shall be provides in any education institution wholly maintained out of state funds.

2. The above provisions shall not apply to an educational institution, which is administered by the state but has been established under any religious endowment or trust, which requires that religious instruction shall be imparted in such inhibition.

3. No person attending any educational institutions recognized by the state or receiving aid out of state funds shall be required to take part in any religious instruction that may be imparted in such institution or in any premises attached thereto unless such person or, if such person is a minor his guardian has given his consent thereto.

Under Article 28 of the Constitution nobody can be compelled to receive religious instructions. Under the second and third categories of institutions imparting education, no person attending such as institution can be completed to receive religious instructions or to attend any religious worship or service imparted or conducted by such institution. But if a person is a minor, his or her guardian if so choose, then such person can be obliged to attend such religious instruction or attend the particular type or worship which such institution is affiliated with.

5. Cultural and Educational Right (Article 29 to 30)

A. Protection of Interests of Minorities

Article 29 provides

1. Any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

2. No citizen shall be denied admission into any education institution maintained

by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them.

In the Ahmedabad St. Xavier's College Society Vs. State of Gujarat, the Supreme Court expressed its view expressly that" The State's interest in education, sofar as religious minorities are concerned, would be served sufficiently by reliance of secular education accompanied by optional religious training in minority schools and colleges, if the secular education is conducted there according to the prescribed curriculum and standard. The Supreme Court in Ahmedabad St. Xavier's case observes that the real reason embodies in Article 30(1) of the Constitution is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited for establishing and administering educational institutions of their choice for the purpose of giving their children that best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is in the true spirit of liberty, equality and fraternity through the medium of education. If religious of linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separate. General education will open doors of perception and act as the natural right of mind for our countryman to live in the whole.

This observation of the Supreme Court makes it clear that the minority educational institutions have no right to impose compulsorily the education of religious denomination or religious sect or religion, upon all the students getting education in it. Religious teaching may only be optional to those students education in it. Religious teaching may only be optional to those students who opt to accept it to their guardians, in case of their minority, give consent to impact such education or training to their wards.

Rights to Property

The 44th Amendment to the Constitution has abolished the fundamental right to property. It is now only a general right of the citizen. Article 31 along with Article 19(1) (f) and clause (5) of Article 19 laid down that every citizen had the right to acquire, hold and dispose of property subject and state's right of imposing by law reasonable restrictions on its exercise in the interest of the general public on for the protection of the interest of any scheduled Tribe. Article 31 laid down that no person could be deprived of his property "save by the authority of law" and that no property could be compulsorily acquired of requisitioned "save for the public purpose and save by the authority of law" The fundamental right to property has been abrogated by the 44th Amendment to the Constitution and by this Amendment Articles (19) f and Articles 31 have been omitted. The object of the Amendment is to take away the right of property

from the category of fundamental rights and make the same a right, which can be regulated by ordinary law.

Right Against Exploitation (Articles 23 and 24).

A prohibition Traffic in human beings and forced labour

Article 23 provides that

(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provisions shall be an offence punishable accordance with law

(2) Nothing in this Article shall prevent the State from imposing compulsory service for public purpose and in imposing such service the race, caste or class or any of them.

This Article prohibits

(a) Traffic in human beings

(b) Beggar and

(c) Other similar forms of forced labour

However an exception is made to this provision that compulsory service may be imposed upon citizen without any distinction of caste, 'race, religion or class for public purposes.

Under Article 23(1) traffic in human beings, take slavery, bonded labour, compulsion of ladies to prostitution or call girls, immortal affairs etc., have been prohibited in all the forms whatsoever the ways exploitation may be. It is correct that slavery of slave trade is not the business of Indians on the land of India or any where through them. But immortal traffic in women is found on a large scale in the country. F or checking and preventing the evil of immortal traffic of women and girls by the devils in the Indian soil, the Union of India for inflicting punishment on those who are engaged in the business of include the disposal of women and girls abducted or kidnapped by the professional criminals by way of sale as movable properties. Such offence is punishable under sections 370 of the Indian Penal Code also which provides that whoever imports, exports removes, buys, sells or dispose of any person as a slave or accepts, receives or details against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend seven years and shall also be liable to fine.

B. Prohibition of Employment of Children in Factories etc.

Article 24 of the Constitution provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous

engagement. The provisions of this Article are in consonance with clauses (e) and (f) of Article 19. According to Article 45 which lays down the Directive principle of State policy that the State shall endeavor to provide within the period of ten years from the commencement of the Constitution, free and compulsory education for all children until they complete the age of fourteen years.

The Employment of Children Act 1938 prohibits employment of children be low the age of 15 years (a) to work in any occupation connected wit the transport of passengers, goods, or mails by railways or, (b) to be employed or permitted to work in any occupation involving handling of goods within the limits of any port. The Act also prohibits employment of children below 12 years in an workshop wherein any of the process such as body manufacturing, explosives, firework, mica cutting and splitting, soap manufacturing and wood clearing is done. The Factories Act, 1948 also prohibits employment of children for pressing cotton work in any factory. The Mines Act, 1952 also contains similar provisions.

VIII. Right to Constitutional Remedies (Articles 32-35)

A. Remedies to Enforcement of Fundamental Remedies

Article 32 provides that

(1) The right to move the Supreme Court appropriate proceedings for the enforcement of the right conferred this part (i.e. part III Fundamental Rights) is guaranteed

(2) The Supreme Court shall have powers to issue directives or orders or writs in the nature of Habeas Corpus, Mandamus, Prohibition, quo warranto and Certiorari whichever may be appropriate, for the enforcement of any of the right conferred by this part.

(3) Without prejudice to the powers conferred on the Supreme Court by the clauses (I) and (2) Parliament may be law empower any other Court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this Constitution. The enumerated and guaranteed fundamental rights enunciated principles of justice's as are the human rights declared under the Universal Declaration of Human Rights provided under Article 32 of the Constitution.

In case of violation of these rights the Supreme Court can be moved under Article 32. A High Court having its territorial jurisdiction may also be moved in case of breaches of fundamental rights, besides the breaches of legal provisions under Article 32 of the constitution.

Fundamental Duties

The original constitution did not contain any provision specifying the Fundamental Duties of the citizens. Part IV - A added by the 42nd Amendment Act, enumerates the Fundamental Duties.

They are:

a) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem:

b) To cherish and follow the noble ideals which inspired our national struggle for freedom;

c) To uphold and protcct the sovereignty, unity and integrity of India;

d) To defend the country and render national service when called upon to do so;

e) To promote harmony and the spirit of common brother hood amongst all the people of India, transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;

f) To value and preserve the rich heritage of our composite culture;

g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

h) To develop the scientific temper, humanism and the spirit of inquiry and reform;

i) To safeguard public property and to abjure violence;

j) To strive towards excellence in all spheres in individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement.

There can be no claim to a Fundamental Right against these duties.

Model questions

1) Examine critically the Fundamental Rights and their safeguards provided by the Indian Constitution.

2) Analyse the position of Fundamental Duties under the Constitution.

2) Estimate the fundamental Rights of Indian Constitution.

LESSON - 9

DIFFERENT ISSUES IN HUMAN RIGHTS

CAPITAL PUNISHMENT

Capital punishment is considered as cruel, inhuman uncivilised and barbaric one. Despite, this practice is still in existence. There is difference of opinion among the Juries and other eminent politicians about the imposition of capital punishment. So the question arises whether it should be abolished or retained? Here the very right to life, as guaranteed by the Constitution and UN Declaration is violated. But if we analyse, the IPC in detail, we can find, the provision for capital punishment i.e., a person's life is liable to be extinguished any time after he has extinguished the life of another. Of course every one has the right to live. But none can divest anyone of his "right to life'. If one does indulge so, it has to be at the cost of his own life. Certain learned jurists have undermined the fact that even right to life is not an absolute right. The question is how can one enjoy life at the cost of another man's life. The international trend is in favour of abolition of death penalty, the UDHR in its Articles 3 and 5 provide, "Every one has the right to life, liberty and security of person" and "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The International Covenant on Civil and Political Rights (1966) b its Article 6 provides, "Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence amnesty, pardon or commutation of the sentence of death may be granted in all cases". It also provides that "Sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried on pregnant women".

The world level trend is in favour of abolition of capital punishment. In U.S.A. capital sentence was challenged in Furman's case on the ground of its violating the 8 and 14th Amendments. Some judges of U.S. declared the capital punishment as unconstitutional. The 8th Amendment of the U.S. Constitution observes that cruel and unusual punishments clause prohibits the infliction of uncivilised and inhuman punishment. Even if such punishment is pronounced the State must treat its members with respect for their intrinsic worth as human beings. A punishment "cruel and unusual" does not comport with human dignity.

There is a persistent trend internationally to abolish the death penalty and India is among 76 countries that retain the death penalty. Worldwide 120 countries have abolished the death penalty in law or practice: 85 countries - for all crimes: 11 countries for ordinary crimes (the death sentence is available only under military law and for treason or crimes committed in exceptional circumstances); and 24 countries - in practice (the death sentence exists in law, however the states has not carried out an execution in more than a decade and has expressed its intention not to execute.

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment, as proclaimed in the Universal Declaration of Human Rights. The death penalty is an inherently unjust and arbitrary punishment, however heinous the crimes for width it is inflicted. Studies globally suggest that is more likely to be imposed on those who are poorer, less educated and form marginalized segments of society. The death penalty is irrecoverable, yet the risk of error in its application is inescapable. Amnesty international recognizes the need to combat violent crime but there is no convincing evidence that the death penalty deters crime more effectively than other punishment. Amnesty international believes that prolonged detention of people under sentence of death must be considered cruel, inhuman and degrading. A number of judgment in India and other countries have ruled that long waiting periods for prisoners facing executive amount to inhuman or degrading punishment or are brutalizing to the human spirit.

The death penalty in India

In 1983 Supreme Court of India ruled that the death penalty can only be applied in the "rarest of rare" cases. Since this is not further defined and no clear guidelines exist, the use of the death is largely dependent on the interpretation of this phrase by individual judges. The first known execution since the late 1990s took place in August 2004 amid widespread popular support. This raised fears that others now on death row in India may also soon be executed. Dhanarrjoy Chatterjee executed at 4.30 a.m on 14 August 2004. He had been sentenced to death in August 1991 for the rape and muted of a schoolgirl in her apartment in Calcutta in March 1990, The Indian authorities have opposed the death penalty in some cases but condoned it in others. In 2004, the government request mercy for Indian national Ayodhya Prasad Chaubey, who was executed in Indonesia on 5 August 2004 on drug- trafficking changes, but the government has condoned other execution of Indian citizen. . The number of execution carried out in India is unknown. In May 2005, an Indian human rights group, the People's Union for Democratic Right (PUDR), called on the Government of India to make public all information on executions since independence in 1947. Indian media have reported that there have been 55 execution since independence. PUDR has challenged this figure, stating that according to a 1967 Law Commission report, at least 1,422 people were executed between 1953 and 1963.

There is no consistency across Indian states with regard to disclosure of death penalty statistics. The Delhi Deputy Director General of Prisons stated it was not in "in the public interest" to publish such figures while official in Maharashtra state disclosed statistics upon request. Later this year, the Indian non-governmental organization, the people's Union for civil Liberties and Amnesty International will request several Indian states to make public their death penalty statistic. Well known death sentences in India

are of persons convicted of assassination major political leaders as in the killings of Mahatma Gandhi and Rajiv Gandhi, or for crimes under 'terrorist' laws, as in the attack on the Indian Parliament in 2001. These sentences have been awarded without considerable alternation. The recently published legal casebook, can society escape the Noose the death penalty in India, contents that of the thousands of murders committed each year in India, it is the poor and underprivileged and person belonging to minority groups who eventually receive the death sentence and are executed for their crimes. All execution in India are by hanging or reportedly by shooting, however the Law Commission of India has recommended letter injection as a more 'humane' mode of execution. Amnesty international is concerned that the death penalty is the ultimate cruel, inhuman and degrading punishment and there can be no 'humane' way to execute someone.

Cases from India

Below are cases from India of persons who have received the death penalty. Amnesty international's concerned about fair trial issues, risk of executive the innocent and the cruelty association with prolonged detention.

The Law Commission of India was given the task of examining the law regarding capital punishment in India and recommend the measures for abolishing, retaining or modifying it. A resolution was moved in the Lokh Sabha, to abolish death sentence and this was taken to the notice of Law Commission. The Law Commission under the Chairmanship of **Mr. J.L. Kapur**, examined it in detail, and its recommendations revealed that it was not in favour of abolition of death sentence in India because of the inherent risks involved in such abolition. The summary of its recommendations is "Having regard; however, to the conditions in India, to the variety of the social upbringing of its inhabitants, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture, India cannot risk the experiment of abolition of capital punishment." The Law Commission stressed that the Court should state the reasons as to why it chooses life imprisonment or death, as the case may be in a given situation. While the Commission recommended an amendment in the Criminal Procedure Code, it stated that "Thus, there appears to be sufficient justification for a provision requiring the court to state its reasons, whenever it awards either of the two sentence in a capital case."

Chatterjee (m) executed 14 August 2004 for the rape and murder of a school girl in Calcutta in March 1990.

There were vigils and protests across India the right before the execution. Following the hanging the executioner apparently broke down and resigned, after offering prayers for Dhananjoy Chatterjee.

Amnesty international also expressed concerns that the 13 years Dhanamjoy Chatterjee spent living with the mental anxiety caused by being sentenced to death may have amounted to cruel, in human and degraded punishment and that the decision to carry out the executive was an arbitrary one. Other courts in India have commuted a death sentence to life imprisonment on the grounds of prolonged detention. In 1989, an Indian court commuted the death sentence imposed on Gyasi Ram to life imprisonment on the grounds that he "had suffered the mental agony of living under the shadow of death for far too long. "Gyasi had been awaiting a decision on a mercy petition for eight years.

They were convicted of a "terrorist act" under the now lapsed 1987 terrorist and Disruptive Activities (prevention) Act (TADA Act); which gave police sweeping powers to arrest and detain without trial under the acts vague and imprecise provision. It was used to arrest among others, members of vulnerable groups. TADA provisions contravene essential legal safeguards for fair trials. For example, provisions contravene Article 14 of the International convention on civil and political Rights including the presumption of innocence until proved guilty, the right of the accused to be promptly informed of the charges against them, the right to be tried without undue delays as well as the right to examine witness against them. In 1992 the chief Minister of Bihar admitted that innocent people had been detained under the Act.

The Supreme Court of India rejected the men's appeal by two votes to one. The dissenting judge noted the "defective" investigation of the killings, particularly in the recording of witness statements. For example, statements were taken well after the incident. He was also critical of the fact that the prosecution has not examined the investigation police officer and there had been no identification parade of the accused. Amnesty international is concerned that the men's trial fell short of international fair trial standards.

Model Question

Point out the rationale of capital punishment.

BONDED LABOUR

The System of "Bonded Labour" constitutes a major problem in our society. It is an outcome of certain categories of economically exploited, helpless and weaker sections of the society. This system originated from the uneven social structure characterized by feudal and semi - feudal conditions. According to National Commission on labour, "Bonded labour can best be described in terms of debt bondage fixed for a time or hereditarily descending from father to son in some cases", The Indian school of Social science has defined bonded labour as a social agreement between a debtor and creditor under which the debtor agrees to render labour or personal services to the creditor

without remuneration in lieu of the satisfaction of the debt or part of debt or interest on principal amount for a specific period or till the debt is satisfied or repaid.

The two essential ingredients of bonded labour thus are: (1) indebtedness and (2) forced labour. The National Commission on Agriculture has accordingly observed: The prominent feature of the system of bonded labour is that a man pledges his person or sometimes members of his family against a loan" indebtedness has rightly labeled as "the mother of bonded labour".. Being compelled to take loan and do forced labour in lie thereof.

History of Bonded Labour

The bonded labour is prevalent since ancient period. It is present in countries like India, even after her independence. It was referred as slavery in Greek and Rome. Poverty, the greed of the landlords and money lenders, usherers etc. made the western slave owning society, to own slaves and provide opportunities for the growth of slavery: The slaves underwent frightful abuses and cruelties and as such they lost their human dignity. They were at the bottom of the heap. So the real slaves was in bondage. Liberty, richness and peace are not known to a slave. In England, slaves were openly sold in auction. Mostly Negroes were sold as slaves. During the time of American war of Independence (1776) many people had realised that slavery was wrong. At one stage prohibition of slavery was tried at. In due course, a large number of people in North America felt that slavery was an evil practice and it should be eradicated throughout the State. This led to the passage of 'Slaves Emancipation Act in 1863 by Abraham Lincoln.

Bonded Labour in India Before and Since Independence

The system of bonded labour existed in India In various names such as slavery, serfs, bondage, forced labour, exploited labour etc. In India its existence could be traced from the period of Indus Civilisation. Due to the coming of Aryans in India the caste system came into force. Sudras, the last cadre of society, were treated as slaves and untouchable. In the Buddha Jataka stories, we find evidence that speak about slavery. So also in Epics. Kautilya, in his Arthashasthra mentions that a man could be slave either by birth or by profession. We get further evidences of forced labour during the period of Guptas, Harsha etc. The Chola period in South India, speaks about 'Vettian' - a sort of forced labour. During the period of Moghuls slavery increased. Though Akbar tried to abolish slavery, he could not succeed in his attempt.

During the British period the Slavery Abolition Act was passed in 1843. Then came the forced labour/Indian Penal Code prohibited forced labour in 1860. On the abolition of slavery, the vested interests called it in a new name to evade the provisions of the above said Actsnhus came the name of bonded labour. These bonded labourers are called in different names in different states of India. In Tamil Nadu they are referred

as Velaikaran (Paniyal), in Kerala Cherumar, in Orissa Halios, in Audhra Pradesh Jassigula, in Gujarat Hali, in Karnataka Jeetha and the like. These bonded labourers were mostly poor, dalits and tribals.

At one stage Zamindari System was abolished in India. The Annual Report of the Commission for Scheduled Castes and Scheduled Tribes give a complete picture of bonded labour. As per the survey conducted by the National Labour Institute (1978) it was estimated that there were about 13 lakh bonded labourers in India. Almost every state in India has bonded labourers. In 1984, more than one lakh bonded in society. Various studies reveal that in many parts of India, the practice of bonded labour still continues. It was reported in Hindustan Times that about 3000 bonded labourers are subject to exploitation. There is no reliable data available about the exact number of bonded labours in India.

The Right to live with human dignity is once for all forgotten. Neither the Government of India nor the State governments have the right to take any action that may deprive a person from enjoying the basic rights as envisaged in the Directive Principles of State Policy (Articles 39,41 and 42) Bonded labourers, even after many years of independence are found in various occupations ego agriculture, industries, stone quarries, brick industries, building construction sites, powerloom centres, match industries, knit wear industries, mines, jewel manufacturing centres, diamond and gem cutting industries, carpet industry, hotels and other establishments.

According to the findings of a survey jointly undertaken by the Gandhi peace foundation and the National Labour Institute in 1978. The number of agricultural bonded labourer is estimated to be 26.17 lakhs. The largest concentration is in Uttar Pradesh followed by Madhya pradesh 95 (lakhs), Orissa (3.50 lakhs), Andra Pradesh (3.25 lakhs) Tamil Nadu (2.50 lakhs), Karnataka 91.93 lakhs), Gujarat (1.71 lakhs), Bihar (1.11 lakhs), Maharastra (1.00 lakhs), and Rajasthan (0.67 lakhs). This is gradually declined today. The other findings of the survey are most of the bonded labourers, 86.6 percent of the total, come from the scheduled castes and scheduled tribes; twenty-five per cent of bonded labourers are below the age of 20 years. Thirty per cent of bonded labour families send two or more of their family members into bondage. About twenty per cent of bonded laboureres have not taken any loan de jure. A labourer is in bondage for six years on an average; in Bihar, Maharastra and Uttar Pradesh the duration of bondage is longer (above ten years) whereas it is shorter in Andra Pradesh, Gujarat and Orissa (three to four years); fifty - five per cent of bonded labourers take loans for the purpose of domestic expenditure; forfeiting the right to seek alternative employment is one of the essential elements of bondage. The largest group of masters (45 per cent) comes, from upper case Hindus, where as 15 per cent: It belong to backward classes. Fifteen per cent of the masters belong to scheduled castes and 13 per cent to scheduled tribes. Fifty-one percent of the masters employ two to five bonded labourers, 5.5 per cent

employ six to ten bonded labourers, whereas 40 per cent of the masters keep only one bonded labourer.

Measures for abolition of the bonded labour system

Measures to abolish the barbaric practice of bonded labour have been initiated since the advent of the British rule and various international conventions held from time to time such as the forced labour convention of 1930, the Universal Declaration of Human Rights, 1948, the supplementary convention on the abolition of slavery, the slave trade and institutions and practices similar to slavery adopted by the conference convened under the auspices of the United Nations in 1956, and the Abolition of Forced Labour convention, 1957 have contributed to urge the government to take necessary steps to eliminate the menace of this crime against humanity by passing necessary legislation of the subject. The Constitution of India provides for it in Article 23. After the adoption of the Constitution, State governments had passed legislations on the subject like the Andhra pradesh (scheduled Tribes) Money lenders Regulation, 1964; Assam Rural Indebteders Relief act, 1975; U.P. Landless Agricultural Labour Debt Relief Act 1975; Orissa Dadan Labour Control and Regulation Act 1975; Inter-state Migrant Workmen (Regulation of Employment and condition of Services and Miscellaneous provisions) Act, 1979.

The Indian Penal Code (Section 371) also provides that "whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either description which many extend to one or fine or with both".

Serious efforts in the direction of statutory abolition of bonded labour through out the country were made only after the announcement of the twenty-point programme in 1975 which unequivocally declared, "the practice of bonded labour is barbarous and will be abolished. All contracts or other arrangements under which services of such bonded labourers are secured, will be declared illegal." In pursuance of this declaration, the bonded labour System, ordinance, abolishing bonded labour with immediate effect, was promulgated on 4 October, 1975 which became the bonded Labour System (Abolition) Act on 2 February 1976. The revised 20 point programme 1986 stipulates: (i) full implementation of laws abolishing bonded labour and (ii) involvement of voluntary agencies in the programme of bonded labour.

The first implies (i) identification, (2) release (3) action against (4) constitution and holding of regular meetings of the vigilance committees at the district and sub-divisional levels. (5) Conferring of powers of judicial magistrates on Executive Magistrates under section 21 of the Bonded Labour System (Abolition) Act, 1976, and (6) maintenance of the registers etc. as prescribed under Rule of the Bonded labour System (Abolition) Rules, 1976.

The responsibilities for identification, release and rehabilitation of bonded labourers

rest with the state governments who are the implementing authorities under the Bonded labour system (Abolition) Act 1976. The incidence of bonded labour system has been reported from 12 states viz., Andhra Pradesh, Bihar, Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh. According to the state Government all the bonded labourers in Kerala and Gujarat have been detected there. In Uttar Pradesh there was no backlog for rehabilitation of bonded labourers at the end of 1987-88. They had, however, identification 901 bonded labour in 88. Out of these, 417 had been rehabilitated. According to the latest reports of the state Governments, the total number of bonded labourers identified and freed as on 88 was 2,36,868 out of which 2,03,035 had been rehabilitated.

With a view to supplementing the efforts of the state Government in rehabilitation of bonded labourers, the Ministry of Labour launched a Centrally sponsored scheme from 1978-79 under which the State Governments are provided central financial assistance of, on a matching grant (50 : 50) basis for rehabilitation of bonded labourers. This scheme originally envisaged provisions of financial assistance upto a ceiling limit of Rs. 4000 per bonded labourer which has since enhanced to Rs 6,250 with effect from 1.2.1986. The rehabilitation scheme can be either land based or animal husbandry based or skill craft based depending up in the aptitude, skill and preference of the beneficiary. The land -based scheme comprises (i) allotment of land (ii) provision of back-up service and facilities such as plough, bullocks, seeds, fertilizers etc. Animal husbandary based schemes involve supply of productive assets and linkage with the market. The skill/ crafts based schemes involve identification of skill crafts, supply of raw material, working capital, sheds; implements and linkage with the market.

For speeding up the pace of rehabilitation of bonded labourers the state governments have been allowed to delegate powers for sanction of rehabilitation schemes to the District Collectors / Divisional Commissioners by setting up the Screening Committee at the District level. Prior to this, such power were vested with the State governments. The State governments have also been requested to set up a Monitoring and Review Committee at the State level under the Chairmanship of the Chief Secretary or some other Senior Officer which will meet every quarter to monitor and review the progress of the programmes of rehabilitation of bonded labour both in physical and financial terms and make suitable recommendation. The Director General (Labour Welfare), Ministry of Labour to be associated as a Member of the Committee.

Senior officers from the Ministry of Labour visit different States to conduct on the spot review of the measures taken by the state Governments for identification, release and rehabilitation of bonded labourers. The deficiencies observed during these reviews are communicated to the respective state governments for necessary corrective action. Based on such reviews, instructions and guidelines on the subject of bonded labourers are also issued to the state governments for effective implementation of the programme.

An envisaged in the 20 point programme 1986, A New plan scheme "grant in aid to Voluntary Agencies in the identification and rehabilitation of bonded labourers has been launched since 30th October 1987. Rs. 100 crores and Rs. 5.00 lakhs have been provided for the 7th Five year plan (1985 - 90) and annual plan (1988-89) respectively.

Steps taken by the government to abolish Bonded labour since Independence

1. Article 23(1) of the Indian Constitution provides that "Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this portion shall be an offence punishable in accordance with law."
2. Mines Act of 1952.
3. Contract Labour Abolition Act 1970.
4. Contract Labour (Regulation and Abolition) Act 1970. 5. Bonded Labour System Abolition Act 1976.
6. Equal Remuneration Act 1976.
7. The Inter-State Migrant Workman (Regulation of Employment and Conditions of Services) Act 1979.
8. Child Labour Prohibition Act 1981.

The Supreme Court of India is doing yeoman service to liberate the bonded labourers. It has directed the Central and State governments for the release of bonded labourers and rehabilitation. As per the direction of Supreme Court, the Tamil Nadu government planned to rehabilitate about 10000 bonded labourers in 1997. A state wide survey identified 25,008 bonded labourers. Children and women are also included. They are tortured inhumanly and their working conditions were the worst.

They work for 18-20 hours per day without any rest. They are not permitted to go out of the factories.

Model Question

Briefly explain the problems of bonded labour.

FEMALE INFANTICIDE

India is the only country in the world where the ratio of women to men has been dwindling over the years. The sex ratio declined from 972 females per 1000 males in 1901 to infant mortality exceeds that of the male. A study reveal that boys are taken to hospital for treatment of common diseases in twice the number of girls. Boys do not fall ill more frequently than girls. They are merely provided with more health care by parents who value sons more than daughters.

India and China are perhaps the only two countries where there had been a regular practice of female infanticide. When the East India company came to India it found female infanticide widely prevalent amongst the higher classes of Hindu community. In the year 1789, Jonathan Duncan, a member of the East India company's Civil service, first discovered the prevalence of female infanticide among the Rajkoomar Rajputs in Banares. In a letter to Lord Cornwallis, he said; I am well assured and it is, indeed, here generally believed and being so, it my duty not to keep such enormities however sanctioned by usage, from the knowledge of the Government, that no infrequent practice among the tribe of the Rajkoomars to extirpate their daughters by causing their mothers to refuse them nurture; whence this race of men do often from necessity, marry into other Rajput families.

In the year 1794 Sir John Shore gave a greater publicity in the existence of the practice by laying the subject before the Asiatic society for its consideration. Duncan's remedy was to meet the Rajkoomar families and obtained a soleman "Convenant" that they would renounce the practice. He also advocated a system of bribing them, as it were, to abandon it, by proposing to government that pecuniary rewards should be offered for all females that might be born and reared. But this suggestion was not approved. It should be borne in mind that the Rajkoomars killed their female infants for two reasons. First, the practice stated from the time of the Muslim rule when Hindu women were forcibly taken away by the Muslims, and secondly, the father of the girl was not able to find a suitable bridegroom and when found, he could not meet the expenses for the marriage.

Duncan was appointed as the Governor of Bombay and there his work inputting down female infanticide became a matter of history. He found female infanticide prevalent in Surat, Cutch, Gujarat and still more in Rajput ruled princely states. In the neighborhood of Baroda, and more or less along the whole of the western Coast there were numerous and powerful clans calling themselves Rajputs under the title of Jerejahs, among whom female infanticide was found to be universally practiced. The tribe claimed to be among the highest purest branches of the Rajputs families. The origin of the custom amongst Jerejah Rajputs is narrated by Colonel walker. A powerful Raja of the Jerejah clan had daughter o(singular beauty and accomplishments. Failing and female infanticide from that time was practiced by the Jerejahas. Moreover, the practice of the Muslim and Mughal rulers demanding the daughters of the Rajput rulers in marriage contributed to the custom amongst Rajput rulers in marriage contributed to the custom amongst Rajputs ruling families. The British Succeeded in putting down the practice.

Affluent rural communities like the Patels of Gujarat and Rajputs have practiced female infanticide for ages. The Patels in the Kheda district of Gujarat had a legacy of female infanticide and this was in practice even three generations ago. As a result, the female ratio came down to 600 and even 200 at one time. The British banned the practice

in 1990. The poor resorted to it on account of dowry rich out of a sense of pride - how could a warrior class.

Rich people preferred to keep their property and business within the family which the daughter divide after marriage. Certain tribal communities and some poor Muslims in Hyderabad are allegedly get rid of their female offspring because they cannot afford to give dowry.

It was reported, as late as in 1986, that there was rampant practice of female infanticide amongst the poverty-ridden Kallar community of Usilamplatti taluka in Madurai district of Tamilnadu.

A study reveals that Usilampatti for 1,200 delivery cases come to the hospital every year. Of these, nearly half delivered female babies. Over 95 per cent of the women who give birth to daughters abscond immediately after the babies are born. The statistics are shocking. Nearly, 600 female births in the Kallar groups are recorded in the Usilampatti Government hospital every year. Out of 600, nearly 570 new born babies disappear with their mothers no sooner than they open their eyes. Hospital sources estimate that nearly 80 per cent of these vanishing babies - more than 450 - became victims of infanticide. Besides this, deliveries also take place in primary health centres and private nursing homes, maternity hospitals and in their own homes for which no comprehensive and reliable records are maintained. This trend is declined after giving importance to women education and women children in privileged one today initiating the policies Girl is a Pearl etc.

What was even more shocking was the fact that it was openly practiced and the estimated number of female infanticide ran into thousands, possibly thousands, every year, and deliberate poisoning of a female child had become commonplace. Mothers who had killed their babies, some barely a day old, expressed openly and stoutly defended their action.

Most of the Kallars are poor landless labourers. If a Kallar wanted to get his daughter married to a poor agricultural worker the girl's father has to give Rs.2,000 in cash to the bridegroom and jewellery worth, at least, five sovereigns of gold to his daughter. The dowry system took among Kallars after the dam of the Vaigai river brought irrigation water into Usilampatti taluka about 30 years ago. With property and affluence came increasing dowry demands which today are a part of the Kallar's culture.

These Kallars and Thevars were earlier the warriors for the Chola emperors who ruled parts of Tamil Nadu ten centuries ago. They are basically a warrior caste. Kallar men look down on their women and daughters so much so that a Kallar husband will not come to the hospital to see his new born child, if it is a daughter. In some Kallar families husbands grow madar plants from the time their wives conceive so that they can administer madar poison if a daughter is born.

In some stray instances the Kallarwives refuse to bow to their husband's wishes and they suffer for it. A Kallar husband drove his wife out of their house after she bore him his second daughter because she refused to kill the later. When a son is born it is regarded as a priceless asset and merry making in the family goes on for days together. This attitude in reflected in the tattered clothes worn by daughters and sons dressed in costly clothes. The basic view of women as a born liability because of the dowry evil has taken deep rots among the Kallars, the Thevars and the Gaunders. But no Gaunders are taking to education and birth control, and the barbaric practice is slowly disappearing. The Gaunders are richer than Kallars because they own land.

The ghastly topic of organized female infanticide in Rajasthan exploded into open vision Bench of the Rajasthan High Court, in its judgment, delivered in October 1988: directed the State Government to register a case and investigated by an officer of the rank of a DIG of Police.

Among the Bhati community, in Rajasthan, female infanticide had been widely prevalent; female infants were routinely killed before they saw the light of the day, outside the mud hovels. The methods are as primitive as the tradition. A bagful of sand is used to suffocate the child. All this is done by the mother while the other women goad her to do away with the unwanted sibling.

The population of Bhati girls, specifically in the cluster of dozen-odd villages on the western border of Jaisalmer, is barely 50, while the total population is over 10,000. And all the girls are less than 10 years old, a pointer that traditions have only recently and slowly begun to change, and not all Bhatis are killing their infant girls. The reason for this centuries-old practice is a complex mix of government neglect, ignorance, superstition, dowry demands and above all, the false pride of Bhatis.

The practice is widespread in the villages of Deora, Baiya, Jhinjhiayail, Maudha, Raudha and Kundu. In these places the literacy rate is a mere 12 per cent. Out of a population of 4901 only 15 women are educated up to the primary level. Lack of education, non-availability of the basic amenity such as hospitals with maternity wards, and backwardness of the people are responsible for the social evil.

Cases of female infanticide are seldom reported to the police. It is very difficult to prosecute when the people of whole village are involved. Female infanticide cannot be dealt with under Section 302 IPC as in other as in other cases of homicide. We have to change slowly the mental habits and outlook of these people by education The parents are not murderers; they are victims themselves - victims of tradition, ignorance and isolation, poverty and accepted practice of the community. However brutal the crime, there was a certain social justification on their part that cannot be dismissed outright. Government agencies and social organizations have to find ways and means to stop killings.

Discrimination between a boy and girl begins even before birth. Ever since amniocentesis, popularly known as a "sex determination" test and whose real purpose is to detect abnormalities in the foetus, was introduced in India some years ago, re ports have been pouring in that the "test" is being used not just to determine the sex of the foetus, but as a prelude to the abortion of a female foetus. The Maharashtra Government had estimated that as many as 45,000 such abortions were carried out in 1985 in the Greater Bombay area alone. From 1979 to 1982 reports, Shoma A. Chatterji, 78,000 female fetuses were aborted by those who had volunteered for the tests. One shudders to think what the figures of whole of India may be, and they would become if amniocentesis becomes freely available in the rural areas. Tamil Nadu Government has banned this test in 2002.

In 1985, more than one lakh of female foetuses were aborted, by couples, in Maharashtra alone, who had volunteered for the tests; in Greater Bombay area as many as 45,000 such abortions were carried out in 1985 and Government hospitals and private nursing homes are active participants in the practice. Abortions were legalized in India in 1971 though there is no sanction for selective abortion of female foetuses after sex-determination tests. The history of amniocentesis tests in India can be traced back to 1974 when the Human Cytogenetic Unit at the All India Institute of Medical Sciences, Delhi, began these tests on a commercial basis. This was stopped at the behest of the Indian Council of Medical Research a year later. In Bombay, the Institute for Research in Reproduction also ceased such tests, as did the group of hospitals in 1979 after a barrage of protests.

The real awakening against the test among women's organizations in the country was spurred by a poster which said "Better Rs.500 now than Rs.5 lakhs later". It was directly asking parents to get the female foetuses aborted after an SD test to avoid the expense of a dowry. The hospitals in some places which were minting money through these tests and abortions, were forced to call a halt to the test and if there were no tests, there could not be any abortions either! Indian couples living in the U.S.A. and the U.K. and other Western countries also came to Bombay and Ahmedabad for these tests because they are banned in the West. "Most of the time patients think that the tests are like blood and urine tests. What they do not realize is that such tests are hazardous because they can lead to deformities and injuries to the foetus" says Dr. Lata Shah.

We are a people who kill female foetus on the one hand and encourage sterile couples to have test-tube babies at great cost on the other. We induce terminally ill patients to volunteer for passive euthanasia but do nothing about the murders of young women for the sake of dowry.

Respect for Indian womanhood and basic human values demand that the Government ban amniocentesis and sex determination tests except where they are

conducted' in Government supervised hospitals and that too for the sole purpose of detecting genetic disorders as in the West. Considering the profits that are made in the "sex determination business" a legal ban may drive the practice underground and one cannot rule out the possibility of collusion between some unscrupulous medical practitioners and equally unscrupulous officials charged with enforcing the law. This is where women's organisations, ethically minded medical associations and civilliberties and humanitarian groups can all playa part. Since women form 48 per cent of our total population and are a national asset, contributing to a great extent to the process of development, we must give our attention to women at the pre-natal, natal and post natal stages. Tamil Nadu Government has taken many measures to empower women and encourage female child as pearl to the family.

Model Question

Write briefly on Female infanticide.

RIGHT TO DISSENT

Right to Dissent is the main Human Right which is discussed in this section, Freedom of Speech, Assembly, and Association. The chief instruments of dissent are freedom of speech, freedom of assembly, and freedom of association. Democratic theory proclaims that all people should be free to speak, write, publish, broadcast, assemble demonstrate, picket, and organize on behalf of their beliefs, their opinions and their points of view. A necessary complement to these freedoms is the existence of many independent mass media of communication (newspapers, magazines, radio stations, television networks) with the right freely to convey to the public news of social controversy as it occurs in our legislative bodies and in the community.

Inevitably, such vast freedom carries with it certain risks. Freedom of speech, assembly, and association can be used to propagate lies as well as truths, wrongs as well as rights, and injustice as well as justice. The underlying hope is that given adequate exposure to all sides of an issues, the people will possess enough good sense to make the proper distinctions and judgments.

The real question here is where to put your trust - in the rulers or' in the people. In autocratic societies where there is little or no right to dissent, the rulers decide what viewpoints the people may hear and see. The assumption is that the rulers are sufficiently wise and benevolent to make these decisions.

Democratic societies, on the other hand are fearful of reposing so much trust in their leaders. It is not that democratic societies necessarily have blind faith that the masses of people will always choose wisely. It's that they have considerably less faith in anyone else.

Indeed, the power to remove viewpoints from public scrutiny carries with it an enormous risk of tyranny. The exercise of such power can decide the outcome of almost any social conflict. Deny tenants the right to distribute their leaflets and you ensure victory for their landlords. Stop unions from picketing and you guarantee the domination of management. Take opposition viewpoints of television and you handle the next election to the government.

Democratic societies prefer to run the risk of error through the free competition of viewpoints than to run the risk of tyranny through curtailing what the people may hear and see. If there be error, the answer to it is not less communication, but more communication.

This explains why we will often find principled democrats fighting vigorously for the right to dissent even on behalf of those whom they personally dislike. Democrats have made a motto of the famous words of the eighteenth century French writer, Voltarie: "I may disapprove of what you say, but I will defend to the death your right to say it" Yet, freedom of speech, assembly, and association cannot be absolute and unlimited.

Some controls under some circumstances are necessary and inevitable. As a great judge once wisely counseled us, there can be no freedom of speech falsely to shout "fire" in crowded theatre. Moreover, freedom of assembly cannot mean the right to conduct a noisy parade in residential neighbourhood at 4 0' clock in the morning. And freedom of association cannot include the creation of conspiracies to commit criminal offences.

As it happens, society today, there are a number of laws which restrict freedom of speech, assembly and association. Defamation laws enable people to sue and recover damages from those whose words and publications have falsely maligned them.

Under the Criminal Code, it is unlawful to promote hatred of any group because of race, creed, or ethnicity; to counsel the commission of a criminal offence; to cause a disturbance at or near a public place by shouting, singing, swearing, etc. Moreover, in many municipalities, permission must be secured from police authorities in order to conduct parades and demonstrations in the streets.

Laws which regulate freedom of speech, assembly, and association. Rather, it is our function to declare how essential these freedoms are and to recognize that they must inevitably be subject to some limitations. The problem, at any point, is to decide whether the harm caused by the existence of the freedom is substantial enough to warrant an abridgement of the freedom - with all the dangers that abridgement involves.

Model Question

Describe the limitations of Right to speech.

RIGHTS OF SCHEDULED CASTES AND SCHEDULED TRIBES

According to scholar statesman and the late President S. Radhakrishnan, Manu had based his Chaturvama concept of priest teacher, warrior, businessman and worker with a view to accord equal status, equal prestige and equal value to all sections of the society but winds of change and waves of history turned function based Chaturvama into heredity based the jajmani system that ultimately turned out to be the greatest curse for the country. Of all the sections the shudras, once put on the lowest rung of the social hierarchy were destined to suffer all types of deprivations. These untouchables and depressed classes came to be designated as Scheduled Castes - the term appeared for the first time in the Government of, India Act, 1935. In April 1936, the British Government had issued the Government of India (Scheduled Castes) order, 1936 specifying certain castes, races and tribes as scheduled castes in the then provinces of Assam, Bengal, Bihar, Bombay, Central provinces and Bihar, Madras, Orissa, Punjab and United Provinces.

Under Article 341 of the Constitution, certain backward classes/communities suffering from untouchability and social disabilities were declared as scheduled castes. After the Constitution came into force, the list of scheduled castes was notified under the Constitution (Scheduled Castes) Order 1950 by the President of India. So far 15 President Orders specifying Scheduled castes and Scheduled Tribes for various states and Union territories have been issued. Any amendment to the existing list of scheduled castes/scheduled tribes is made by a Parliamentary enactment. On the part of the Government, no definition of a Scheduled caste or a Tribe has even been given. Only at the pleasure of authorities' a community becomes a Scheduled Caste or a Scheduled Tribe. No wonder, a community having some socio-cultural-economic characteristics is a Scheduled Caste or a Tribe in one state UT but not in other. Not only that on purely political considerations, some communities on the advice of some sociologists have been 'scheduled' to draw benefits whereas the Ladakhis, totally similar to their neighbours in Himachal Pradesh have ultimately resorted to violence to get themselves scheduled. By 1971 there were 612 Scheduled Castes in India.

State of Scheduled Castes

According to 1981 census, the Scheduled Castes and Scheduled Tribes constitute 15.47 per cent and 7.85 respectively of the total population of the country. In other words, Harijans and 'Girijans' that is, Tribes, constitute about one fourth of the country's population. The major concentration of Scheduled Castes is, in Uttar Pradesh (22.3 per cent) followed by West Bengal (11.46%), Bihar (9.8%), Tamil Nadu (8.48%), Andhra Pradesh (7.6%), Madhya Pradesh (7.02%), Rajasthan (5.57%), Karnataka (5.34%), Punjab (4.31%), Maharashtra (4.28%), Kerala (2.43%), Haryana (2.35%), Gujarat (2.33%), Himachal Pradesh (1.01%), Jammu and Kashmir (0.47%), Tripura (0.30%), Sikkim (0.02%) and Manipur (0.02%).

In Nagaland, Andaman and Nikobar Islands and Lakshadeep there are no Scheduled Castes and in Meghalaya, Arunachal Pradesh, Dadra and Nagar Haveli and Mizoram their number is very insignificant.

An overwhelming number of the Harijans (88 per cent) resides in the countryside. Although until recent past, a Harijan dreaded to move out of his moorings, but owing to agricultural development (particularly the Green Revolution) in some parts of the country, industrial progress in certain regions, rapidly expanding urbanization and the breaking of the jajmani system as also the steeply declining demand for rural goods prepared by artisans, the Harijans have become quite a mobile class. About 52 per cent of all scheduled caste workers are agricultural labourers and 28 per cent are small and marginal farmers and share croppers. In the western part of the country almost all weavers are from Scheduled Castes and in the eastern part of the country almost all fishermen are from the Scheduled Castes. Unclean occupations like scavenging, flaying, tanning etc. are almost entirely left to the Scheduled Castes. In the urban areas a substantial proportion of rickshaw pullers, cart pullers, construction labourers, beedi workers and other unorganized non-agricultural wage labourers and civic sanitation workers belong to Scheduled Castes. They are amongst the poorest of those who live below the poverty line.

Although there are have-nots and downtrodden among other sections of the populace, the major chunk of the deprived section of India's population that is living in abject poverty, abnormal ignorance and unparalleled superstition comes from the Scheduled Castes. Among deprived people too, it was the Harijans who for centuries lived practically the life of servitude, humiliation and utter helplessness.

Atrocities heaped on the Dalits and the downtrodden by our society and state is bad enough. What is worse is not even compensation is provided to the victims or the perpetrators of such heinous crime are arrested. This is due to the historical hatred and abhorrence the upper castes and upper classes have towards the Dalits. Hate is usually understood as dislike to someone intensely or to maintain an inimical relationship with someone. But this sentiment of dislike in the course of time takes a deep sense of detestation and disapproval. According to the Penguin Dictionary of Psychology: "Hatred is a deep, enduring, intense emotion expressing animosity, anger and hostility towards a person or a group or an object". Hatred usually assumes the desire to harm or cause pain to the object or the emotion and feelings of pleasure from the objects misfortunes (1985). Since human beings have to interact with each other, day after day, in course of social interaction, hatred takes the form of destruction and devastation.

The heart of the matter is that the lower castes are considered to be antithesis of the upper caste. The very presence of the Dalits and the downtrodden seem to challenge the unequal and inhuman social order. Moreover, the Dalits today more than ever are

challenging the very foundation on which the Indian state and society is established. As they are becoming acutely aware of the cumulative effects of poverty, penury, resourcelessness and powerlessness of the entire Dalit community, they are demanding for equal share in all walks of life. They are also becoming conscious of the fact that they are the real producers, creators, and upholders of all that is social and economic. But they are denied any share from these productions. Hence, they are defying all that was thought to be social; religious, traditional and national. This force and power has led them to raise questions about the very legitimacy and validity of all the power being concentrated in the hands of the upper castes and class. This has sent danger signal to the upper castes and has sounded death bell to the caste system. Hence, the Dalits are subjected to ruthless and brutal oppression, exploitation and atrocities.

The murder and the mayhem that is unleashed on the Dalits are irrespective of the fact that there are Constitutional injunctions against indulging in exploitation of the Dalits. Even a cursory glance at the innumerable legal provisions enacted for the protection of the Dalits and the downtrodden unravel the fact that even if part of these provisions are executed in favour of the Dalits, these discriminations will come to a grinding halt. But a fundamental factor that needs to be highlighted here is that it is inspite of these provisions atrocities are committed on the Dalits. The legal and Constitutional provisions seem to all the more provide avenues for the upper castes to abuse and to oppress the Dalits. Taken together, an all round attempt is made to deny the Dalits any rights as human beings of the society and as citizens of the country.

It is imperative at this stage to briefly examine some of the Constitutional provisions, especially enlisted for the Dalits. Article 15[2] No citizen shall, on the grounds only of religion race, caste, sex, place of birth or any of them, be subject to any disability, liability, restrictions or condition with regard to

(a) access to shops, public restaurants, hotels and places of public entertainment: or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

It is also significant to recognize that the Constitutional provisions did not only speak against the restrictions imposed on the Dalits, it also enjoined upon the government to make provisions for special treatment. The Constitution (First Amendment) Act, 1951, directed the government.

"Nothing shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes".

Under the special enactments we can identify two legal provisions associated with the Dalits and the Tribals. The first one is the Protection of Civil Rights Act, 1955. Historically speaking, the Untouchability (Offences) Act 1955 was amended and rechristened in 1976 as the Protection of Civil Rights Act, 1955. Further, under the revised Act, the practice of untouchability was made both cognizable and non-compoundable and stricter and stringent punishments were provided for the offences. This special Act provides for protection of the Dalits from any kind of denial of civil rights.

The second special provision for the Dalits is the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Interestingly, the nation took 42 years to come to terms with the fact that with all the Constitutional provisions for the protection of rights of the Dalits, murderous crimes are committed against them. It was also realized that even after the enactment of the Protection of Civil Rights Act, 1955 atrocities and discriminations against the Dalits go unabated. Hence, the rulers of this country woke up after 42 years of independence and enacted another stern and strict law under the name The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

It is significant to note that this Act for the first time legally defined the atrocities committed on the Dalits and the Tribals and also ensured punishment. Interestingly, over 18 Acts are considered as offensive towards the Dalits and Tribals and called for penalties. Further, the Act in addition to the punishment enshrined in the Indian Penal Code also made the following as obligatory: forfeiting of property, externment and collective punitive fine. Going a step, this Act made special provisions for Special Courts and Special Prosecutors for expeditious disposal of cases so that the victim of caste oppression is not harassed further and that the entire Dalit community finds scales in the existing legal system. But in reality, most of these punishments and the provisions remained on paper and did not really lead to the protection of Dalit human rights. In the ultimate analysis, it can be stated that many years of independence has made this amply clear that the human rights provided for the Dalits in the Constitution are more for violation than for execution.

Constitutional Safeguards

The Constitution prescribes protection and safeguards for the scheduled castes and other weaker sections either specially or by way of insisting on their general rights as citizens with the object of promoting their educational and economic interests and of removing the social disabilities. The main safeguards are:

i) the abolition of untoucnability and the forbidding of its practice in any form (Art, 17).

ii) the promotion of their educational and economic interests and their protection from social injustice and all forms of exploitation (Art, 46).

iii) the throwing open by law of Hindu religious institutions of a public character to all classes and sections of Hindus (Art, 25b).

iv) to removal of any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partially out of state funds or dedicated to the use of the general public (Art, 15 (2).

v) the curtailment by law in the interest of any scheduled tribes of the general rights of all citizens to move freely, settle in and acquire property (Art, 19 [5]).

vii) the forbidding or any denial of admission to educational institutions maintained by the state or receiving grant out of State funds (Art, 29[2]).

vii) permitting the State to make reservation for the backward classes in public services in case of inadequate representations and requiring the State to consider the claims for the scheduled castes and scheduled tribes in the making of appointments to public services (Art, 16 and 335).

viii) special representation in the Lok Sabha and the State Vidhan Sabhas to scheduled castes and tribes (Article 330, 332 and 334).

ix) the setting up of Tribes Advisory Councils and separate departments in the State and the appointment of a special officer at the centre to promote their welfare and safeguard their interests (Art, 164 and 338 and Fifth Schedule).

x) special provision for the administration and control of scheduled and tribes areas (Article 244 and Fifth and Sixth schedules); and

There are cases that the innumerable Dalit human rights violations that go on unabated even today. These cases indicate the level and the intensity of violation of Constitutional rights of the Dalits in India. One should not think that these are the atrocities committed on the Dalits. But these are the violation of human rights that are reported but there are many that go unreported or even if reported they are not pursued by the police and the administration.

First and foremost, the so called developed states whether educationally developed for example Kerala or economically developed for example Punjab are also states where Dalit human rights are violated as a norm than exception. Interestingly, even states like Himachal Pradesh which is usually considered to be a peace-loving state, the Dalits are subjected to inhuman treatments. Also, it is not only the age-old upper castes who discriminate against the Dalits but also the backward castes especially the upper backward castes who deny the Dalit their basic human rights and Constitutional rights.

The police and the administration have under criticism as to maintain the upper caste bias towards the Dalits. It is they who are supposed to be the protectors of the Dalits from atrocities and discriminations. It is also significant to note that all the political parties on the one hand use the Dalits as vote bank, but leaders cutting across political parties have contributed immensely in the denial of human rights to the Dalits.

The level and intensity of denial of human rights to the Dalits all over India is decreasing The area of denial of human and Constitutional rights of the Dalits is more in the special protection enshrined in the Constitution and in the Amendments made at regular intervals. The foremost is being, that there is decrease in the atrocities committed against the Dalits. But it is warned that the history of the Indian society and state unravels the fact that the rights of the Dalits are denied in the most subtle and systematic manner. It must be avoided.

Model Question

Describe the rights of Scheduled Caste and Scheduled Tribes.

LESSON 10

NATIONAL HUMAN RIGHTS COMMISSION AND STATE HUMAN RIGHTS COMMISSIONS

Women Rights

Abuses against women are relentless, systematic, and widely tolerated, if not explicitly condoned. Violence and discrimination against women are global social epidemics, notwithstanding the very real progress of the international women's human rights movement in identifying, raising awareness about, and ,;challenging impunity for women's human rights violations.

We live in a world in which women do not have basic control over what happens to their bodies. Millions of women and girls are forced to marry and have sex with men they do not desire. Women are unable to depend on the government to protect them from physical violence in the home, with sometimes fatal consequences, including increased risk of HIV/AIDS infection. Women in state custody face sexual assault by their jailers. Women are punished for having sex outside of marriage or with a person of their choosing (rather than of their family's choosing). Husbands and other male family members obstruct or dictate women's access to reproductive disadvantaged or marginalized communities for coercive family planning policies.

Our duty as activities is to expose and denounce as human rights violations those practices and policies that silence and subordinate women. We reject specific legal, cultural, or religious practices by which women are systematically discriminated against, excluded from political participation and public life, segregated in their daily lives, raped in armed conflict, beaten in their homes, denied equal divorce or inheritance rights, killed for having sex, forced to marry, assaulted for not conforming to gender norms, and sold into forced labor. Arguments that sustain and excuse these human rights abuses - those of cultural norms, "appropriate" rights for women, or western imperialism - barely disguise their true meaning: that women's lives matter less than men's. Cultural relativism, which argues that there are no universal human rights and that rights are culture-specific and culturally determined, is still a formidable and corrosive challenge to women's rights to equality and dignity in all facets of their lives.

The Women's Rights Division of Human Rights Watch reveals the dehumanization and marginalization of women. We promote women's equal rights and human dignity. The realization of women's rights is a global struggle based on universal human rights and the rule of law. It requires all of us to unite in solidarity to end traditions, practices, and laws that harm women. It is a fight for freedom to be fully and completely human and equal without apology or permission. Ultimately, the struggle for women's human

rights must be about making women's lives matter everywhere all the time. In practice, this means taking action to stop discrimination and violence against women.

Women's Rights the Responsibility of All

The human rights of women and girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community. (The Vienna Declaration and Programme of Action Part, 1 Para 18).

Women's Rights

The U.N. Secretary-General noted that domestic violence alone is on the increase. Studies in 10 countries, he said, have found that between 17 percent and 38 percent of women have suffered physical assaults by a partner. In the core document of the Beijing Conference, Governments declared that "violence against women constitutes a violation of basic human rights and is an obstacle to the achievement of the objectives of equality, development and peace". Until that point, most governments tended to regard violence against women throughout the world, the Commission on Human Rights adopted resolution 1994/95 of 4 March 1994, in which it decided to appoint the special Rapporteur on violence against women, including its causes and consequences.

Some females fall prey to violence before they are born. When expectant parents about their unborn daughters, hoping for sons instead. In other societies, girls are subjected to such traditional practices as circumcision, which leave them maimed and traumatized. In others, they are compelled to marry at an early age, before they are physically, mentally or emotionally mature. Women are victims of incest, rape and domestic violence that often lead to trauma, physical handicap or death.

A preliminary report in 1994 by the Special Rapporteur, Ms. Radhika Coomaraswamy, focused on three areas of concern where women are particularly vulnerable: in the family (including domestic violence, traditional practices, infanticide) in the community (including rape, sexual assault, commercialized violence such as trafficking in women, labor exploitation, female migrant works (etc.) and by the State (including violence against women in detention as well as violence against women in situations of armed conflict and against refugee women).

The Declaration of the Elimination of Violence against Women is the first international human rights instrument.

The Declaration provides a definition of gender based abuse, calling it "any act of gender based violence that results in, or is likely to result in, physical, sexual or

psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".

The definition is amplified in article 2 of the Declaration, which identifies three areas in which violence commonly takes place:

i) Physical, sexual and psychological violence that occurs in the family, including battering; sexual abuse of female children in the household; dowry related violence; marital rape; female genital mutilation and other traditional practices harmful to women; non spousal violence; and violence related to exploitation.

ii) Physical, sexual and psychological violence that occurs with in the general community, including rape; sexual abuse; sexual harassment and intimidation at work, in educational institutions and elsewhere; trafficking in women; and forced prostitution; and

iii) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

The World Conference on Human Rights, held in Vienna in June 1993, laid extensive groundwork for eliminating violence against women. In the Vienna Declaration and Progarmme of Action, governments declared that the United Nations systems and Member States should work towards the elimination of violence against women in public and private life; of all forms of sexual harassment, exploitation and trafficking in women; of gender bias in the administration of justice; and of any conflicts arising between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.

Violence against women in the family occurs in developed and developing countries alike. It has long been considered a private matter by bystanders including neighbors, the community and government. But such private matters have a tendency to become public tragedies. In the United States, a woman is beaten every 18 minutes.

Indeed, domestic violence is the leading cause of injury among women of reproductive age in the United States. Between 22 and 35 per cent of women who visit emergency rooms are there for that reason. In many countries, women fall victim to traditional practices that violate their human rights. The persistence of the problem has much to do with the fact that most of these physically and psychologically harmful customs are deeply rooted in the tradition and culture of society.

According to the World Health Organization 85 million to 115 million girls and women in the population have undergone some form of female genital mutilation and suffer from its adverse health effects. In some countries, weddings are preceded by the payment of an agreed upon dowry by the bride's family. Failure to pay the dowry can lead to violence. Early marriage, especially without the consent of the girl, is another

form of human rights violation. Early marriage followed by multiple pregnancies can affect the health of women for life.

Pornography

Another concern highlighted in the Special Rapporteur's report is pornography, which represents a form of violence against women that "glamorizes the degradation and maltreatment of women and asserts their subordinate function as mere receptacles for male lust". Violence against women by the very people who are supposed to protect them members of the law enforcement and criminal justice systems is widespread. Women are physically or verbally abused; they also suffer sexual and physical torture. According to Amnesty International, thousands of women held in custody are routinely raped in police detention centers worldwide. The report of the Special Rapporteur underlines the necessity for States to prosecute those accused of abusing women while in detention and to hold them accountable for their actions.

Rape has been widely used as a weapon of war whenever armed conflicts arise between different parties. It has been used all over the world; in Chiapas Mexico, in Rwanda, in Kuwait, in Haiti, in Colombia.

Women and girl children are frequently victims of gang rape committed by soldiers from all sides of a conflict. Such acts are done mainly to trample the dignity of the victims. Rape has been used to reinforce the policy of ethnic cleansing in the war that has been tearing apart the former Yugoslavia.

Women and children form the great majority of refugee populations all over the world and are especially vulnerable to violence and exploitation. In refugee camps, they are raped and abused by military and immigration personnel, bandit group's male refuges and rival ethnic groups. They are also forced into prostitution.

In her report, the Special Rapporteur proposes the following measures to be taken for the protection of women and girls in refugee camps: improvement of security, deployment of trained female officers at all points of the refugees journey, participation of women in organizational structures of the camps and prosecution of government and military personnel responsible for abuse against refugee women.

Employment

Women earn 50-80% of what men earn; for the same kind of work. The lower end is seen among women workers in Korea, Japan, Singapore and India. The gap between men's wages and those of women in developed countries is usually between 10% and 30%. Among the developing countries, Sri Lanka appears to have gone the farthest in gender equality in wages - female wages are 96% of men's wages.

ILO says that while all over the world the participation of women in visible work is increasing, female wages remain less than that of the men, job quality is deteriorating and a femininsation of poverty is taking place. Women's work is valued less than that of men. The number of women working in factories form 11.33% of total women labourers in India So also the women as weavers, tailors, sweepers, vendors etc. undergo a number of hardships in carrying on their work.

Protection of Rural women workers

There is no unanimous opinion about the protection of the rights of agricultural workers, especially rural women workers. The rural rich have always succeeded in sabotaging any attempt made to protect the agricultural women workers. So there arises the need for the introduction of special legislations to protect the rights of the most exploited section of the labour force in India. Women's work in agriculture is only supplementary, as the agricultural workers usually be men. But the women agricultural workers-out-number men and in almost all states of India, more than women workers are joining the agricultural work force than man. During the decade 1981 - 1991 the number of women workers in agriculture was 28.3 millions. 66% of these women workers belong either to the SCs, or STs, and a vast majority of them are landless.

In rural areas women have to walk miles together to fetch water. The high caste people put hurdles to women of lower castes. Sometimes the control of water supply by the high caste landlords has been an instrument to get free labour from the women who come to collect water. If at all there were tube wells in Dalits' areas, they are put out of order so, for a pot of water the rural women are forced to attend Some domestic works in the house of landlords. In some cases they have to work freely for hours together for a pot of water. Rural women are also raped and put into sexual assaults by landlord gangs. Even if they want to report the crime, there is no support for the affected women. Here the anti-rape laws are quite silent. Thus the list of crimes against rural women is a lengthy one.

Convention concerning the Employment of Women and Equal Remuneration for Men and Women Workers for work of equal value (1951) and the Convention concerning Discrimination in Respect of Employments and occupation (1958) and UNESCO's Convention against Discrimination in Education (1960) and the Mexico Declaration all emphasized the equality of women.

India began to feel since 1975, the need of organising public opinion regard to the problems of women. As a result, Indian women got the incorporation of a new Ministry relating to women are

1) Child Marriage Resistant Act. 1929.

2) Prohibition of Sati Act 1829, Sati Prevention Act (1987)

3) The Hindu Marriage Act 1955,

4) Hindu Adoption and Maintenance Act 1956,

5) Immoral Traffic Prevention Act 1956,

6) Hindu Succession Act 1956,

7) The Dowry Prohibition Act 1961,

8) The Maternity Benefits Act 1961,

9) Muslim Protection of Rights on Divorce Act 1986 etc.

Indian Constitution provides equality before the law (Article 14), shall not discriminate any citizen on the ground of sex (Article 15), equal opportunity for all (Article 16), equal justice (Article 38), equal pay for equal work for both men and women (Article 39), property right (Article 300A) etc.

Violation of women's rights has been a world wide phenomenon. Almost all the countries of the world have not been free from this crime. Every organisation, both private and public must have a complain cell that would sympathetically examine complaints of economic disparities. Equality in all stages must be installed without any bias and discrimination. Though the position of Indian women had improved since independence, it was not upto the level of expectations. It is not enough to provide and guarantee rights. Effective action and achievement should be the aim, goal and target in a democracy. Every one should realise it in reality and work for integrity.

Model Question

Explain the rights of women in India.

CHILDREN AND HUMAN RIGHTS

Protection of Children under the International Instruments

Under the UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948, Article 25(2) provides that "Motherhood and childhood are entitled to special care and assistance, whether born in or out of wedlock, shall enjoy the same social protection.

Under the International Covenant on Economic, Social and Cultural Rights, 1976

1. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals 07 health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

2. The State Parties to the present Covenant recognize that with a view to achieving the full realization of right:

(a) Primary education shall be compulsory and available free to all.

(b) Secondary education in its different forms, including technical vocational secondary education shall be made generally available and accessible to all, by every appropriate means, and in particular by the progressive introduction of free education.

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed.

Unoted Nations International Children's Emergency Fund (UNICEF)

The United Nations Organisation established founded this Fund on December 11, 1948 for providing assistance to children and adolescents of the countries which had been victim's of aggression. It provided them without any discrimination as to race, caste, sex, national status or political belief. On October 6, 1953 the General Assembly decided to utilize this Fund for assistance of the children of developing countries.

The name of this Fund was also changed as UNITED NATIONS CHILDREN'S FUND instead of the United Nations International Children's Emergency Fund, but its initials former name UNICEF was retained.

The Economic and Social Council of the United Nations supervises its work and also reviews it from time to time. The year 1979 as the Children Year in the World, (a) for providing a framework for advocacy on behalf of children and for enhancing the awareness of the special need of children on the part of the decision makers and the public and (b) for promoting recognition of the fact that programmes for children should be an integral part of Economic and Social Development plans, with a view to achieving, in both the long term and short term, sustained activities for the benefit of children at the national and international level.

This International Year of Child, 1979, was observed as the twentieth anniversary of the adoption of 1959 Declaration of the Rights of Child. The UNICEF provided the facility for celebration of this Year of Children at national, regional and international levels throughout the world with great enthusiasm and awakening on the subject.

International Attempts for Adopting Rights of Child upto International Convention of the Rights of Child, 1990

The protection of children's rights was first considered at the international level in 1934 when the Geneva Declaration of the Rights of the Child was adopted by the League of Nations. Thereafter the Declarations of United Nations came. On 10th

December, 1948, the Universal Declaration of Human Rights were adopted which contained the material rights of the children. Then on November 20, 1959 the United Nations adopted another Declaration on the Rights of Child, specifically relating to children. In confirmation with this Declaration and as a formal implementation the United Nations celebrated the year 1959 as the Children's Year throughout the World at national, regional and international levels, in the International Covenant on Economic, Social and Cultural Rights also special attention was drawn on the rights of children. Similarly, in the International Covenant on Civil and Political Rights as well the rights of children were reiterated.

Children Rights under Indian Constitution

Article 24 prohibits employment of a child below the age of fourteen years in any factory or mine or its engagement in any other hazardous employment.

Article 39, clauses (e) and (1) provide that the State in particular, direct its policy towards securing (e) that the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age of strength;

(f) That children are given opportunities and facilities to develop in healthy manner and in conditions of freedom and dignity and the childhood and youth are protected against exploitation against moral and material abandonment.

Article 45 provides for free and compulsory education for children, that the State shall endeavor to provide within a period of ten years from the commencement of this constitution, for free and compulsory education, for all children until they complete the age of fourteen years.

Even before the enforcement of the Constitution, the Employment of Children Act, 1938, ensure protection of children from being exploited in certain circumstances. This Act prohibited the employment of children below twelve years in any workshop where the process of bidi-manufacturing and wood cleaning were carried on. The Act also prohibited children below fifteen years their employment - (a) in any occupation connected with the transportation of passengers, good, or mails by railways or, (b) in any occupation involving the handling of goods within the limit of any port.

The Child Labour (Protection and Regulation) Act, 1986 replaced the aforesaid former Act.

The Act also prohibits the employment of children below the age of fourteen years in the processes of bidi-making, carpet weaving, cement manufacturing, including bagging of cement, explosives and fire-works, mica-cutting and splitting, shellac manufacture, soap manufacture, and training, buildings and construction industry. But workshops where any process in carried on by occupier with the aid of his family and such schools which are established from application of the Act.

The Children (pledging of labour) Act, 1933

The Royal Commission of Labour found evidence in such widely separated areas a Amristar, Ahamadabad and Madras of the practice of pledging child labour, that is, the taking of advances by parents of guardians on agreements, written or oral, pledging the labour of their children. In some cases the children so pledged were subjected particularly to unsatisfactory working conditions. The Commission considered that the State would be justified in adopting strong measures to eradicate the evil, and this Act was brought to do so by imposing penalties on parents by agreements pledging the labour of children and of personal knowing employing children whose labour is so pledged.

Factories Act, 1948

Under section 2 "YOUNG PERSON" as defined to mean a person who is either a child or an adolescent.

Section 22(2) prohibits a child to be allowed to do certain works. It provides that no women or young person shall be allowed to clean, lubricate, or adjust any part of prime mover or of any transmission machinery.

Section 23 prohibits employment of young person on dangerous machines that (1) No young employment shall be required or allowed to work at any machine to which this section applied.

Section 27 prohibits employment of women and children near cotton openers, that no women or child shall be employed in any art of a factory for pressing cotton in which a cotton-opener is at work.

Section 71 provides for working hours for children that no child shall be employment or permitted to work in any factory (a) for more than four and half hours in any day; (b) he shall not be allowed to work in the right for any time the period of work of all children employed in a factory shall be limited to two shifts.

Section 73 requires register of children to be maintained about child workers to be available to the Inspector at all times during working hours, or when any work is being carried in a factory, showing

(a) The name of each child worker in the factory;

(b) The nature of his work;

(c) The group, if any, in which he is included;

(d) Where his group works on shifts, the relay to which he is allotted; and

(e) The number of his certificate of fitness granted under Section 69.

The section further requires that no child worker shall be required or allowed to work in any factory unless his name and other particulars have been entrees in the register of child workers.

The Mines Act, 1952

In the Bill it was proposed to prohibit after a certain date to be notified by the Central Government the presence of children in any part of a mine where operations connected with, or incidental to, mining process are being carried on. The intention was that the presence of children at mines should be prohibited as soon as arrangements for provision of elementary educated can be made in Collieries.

Merchant Shipping Act, 1958

Section 109 of this Act prohibits employment of children to be engaged or carried to sea to work in any capacity in any ship.

Bonded Labour System (Abolition) Act, 1976

The Act was brought to Article 23 of the Constitution, which prohibits traffic in human beings and beggar and other similar forms of forced labour. The object of this Act is to strike against the system of bonded labour which has been a shameful scar on the Indian social scene for decades and which has continued to disfigure the life of the nation even after independence. This Act has been brought in compliance with Article 23 of the Constitution. The object of this Act is to check the exploitation of the weaker section of people.

Model Question

Discuss the rights of children

REFUGEES AND DISPLACED PERSON

The refugees may be defined a person or person who have left their homeland or place or residence due to unavoidable and oppressive circumstances and are not prepared now to go back to their homeland or original place of residence.

A refugee is some one with a well- founded fear of persecution on the basis of his or her race, religion, nationality, membership in a particular social group or political opinion, who is outside of his or her country of nationality and unable or unwilling to return. Refugees are forced from their countries by war, civil conflict, political strife or gross human rights abuses. There were an estimated 14.9 million refugees in the world in 2001 - people who had crossed an international boarded to seek safety - and at least 22 million internally displaced person (IDPs) who had been uprooted within their own countries.

Enshrined in Article 14 of the 1948 Universal Declaration of Human Rights is the right "to seek and to enjoy in other countries asylum from persecution." This principle recognizes that victims of human rights abuse must be able to leave their country freely and to seek refuge elsewhere. Governments frequently see refugees as a threat or a

burden, refusing to respect this core principle of human rights. The global refugee crisis affects every continent and almost every country. In 2001, 78 percent of all refugees came from 10 areas: Afghanistan, Angola, Burma, Burundi, Congo-Kinshasa, Entreat, Iraq the Palestinian territories, Somalia and Sudan Palestinians are the world's oldest and largest refugee population, and make up more than one fourth of all refugees. Asia hosts 45 percent of all refugees, followed by Africa (30 percent), Europe (19 percent) and North America (5 percent) ·

Throughout history, people have fled their homes to escape persecution. In the after math of world War II, the international community included the right to asylum in the 1948 Universal Declaration of Human Rights. In 1950, the office of the United Nations High Commissioner for Refugees (UNHCR) was created to protect and assist refugees, and in 1951, the United Nations adopted the convention to the status of Refugees, a legally binding treaty that, by February 2002, had been ratified by 140 countries.

In the past years, states have largely regressed in their commitment to protect refugees, with the wealthy industrialized states of Europe, North America and Australia -which first established the international refugee protection system adopting particularly hostile and restrictive policies. Governments have subjected refugees to arbitrary arrest denial of social and economic rights and closed borders. In the worst cases, the most fundamental principle of refugee protection, more foulement, is violated, and refugee are forcibly returned to countries where they face persecution. Since September 11, 2001, many countries have pushed through emergency anti - terrorism legislation that curtails the rights of refugees.

Human rights watch believes the right to asylum is a matter of life and death and cannot compromised. In our work to stop human rights abuses in countries around the world. We seek to address root causes that force people to flee. We also advocate for greater protection for refugees and IDPs and for an end to the abuses they suffer when they reach supposed safety. Human rights watch calls on the united Nations and on governments everywhere to uphold their obligation to protect refugees and to respect their rights - regardless of where they are form or where they seek refuge.

Russian confederation etc., the High commissioner has sent assistance measures to the refuges who may be called displaced persons, on the ground of humanity

Origin and development or refugee international law

The League of Nations for the first time appointed a High Commissioner of Russian Refugees in 1921. The decision for such appointment was taken by the League on June 27. 1921. The High commission was appointed to coordinate the action taken in different countries or the problem of refugees.

The High.Commissioner

(i) to decide the legal status of refugees

(ii) to organize their repatriation or their allocation to various countries which might be able to receive them and to find means for work for them; and

(iii) to undertake relief work amongst them with the aid of philanthropic societies

This mandate was extended to the Armenian refugees in 1924 and to Assyrian, Assyro-Chaldean and Turkish refugees in 1928.

Besides, some international instrument were also adopted by the World organisation, the League of Nations, such as the convention relating to the status of refugees, of October, 28. 1993; and similar convention of February 10, 1983, which was adopted regarding the status of refugees from Germany. This convention was signed by 9 states of refugees from Germany. Were Belgium, France and U.K. with certain reservations whereas the convention of 1933 also was signed by 9 states and was ratified by eight states, with certain reservation. These states and Belgium, Bulgaria, Czechoslovakia, Denmark, France, Italy, Norway and U.K.

Then the International Organisation, i.e. the League of Nations had certainly made great efforts to ascertain the status of refugees and afford protective measures to them. However the international law relating to refugee problem could not gain much impetus beyond the rudimentary stage.

After the end of the second world war, the United Nations was established and form its very inception its attention was drawn to solve the refugee problem since this very problem was the attention was the most gruesome state of affairs created by the second world war after capturing the warmonger countries and their leaders to be tried as international criminals against humanity.

Genocide is the main cause of displacement of minorities or refugees problem

On December 11 m, 1946, by unanimous resolution of the General Assembly of the United Nations, it was affirmed that genocide was a "crime under international law": for which the perpetrators, whether private individuals or public officials were punishable. Thus the genociders or criminals committing genocide in any part of the world are liable to be prosecuted and punished before the international court of justice. Genocide's those acts which are committed with intend to destroy a national, ethical racial or religious group, such as killing or causing serious bodily or mental harm to the members of the group and deliberately inflicting on the group conditions of life calculated to bring about its total or partial destruction. As has been said above that the General Assembly itself had declared genocide to be a crime under international law.

According to Sir Haretely Shawcross, "The only real sanction against genocide

was war" Five kinds of acts aimed at destroying "a national ethnical, racial or religious group causing them serious bodily or mental harm, deliberately inflicting conditions on the group to bring about its physical destruction, imposing measures to prevent births within the group, and forcibly transferring children from it to another group. Not only genocide itself but also conspiracy or incitement to commit it, as well as attempts to commit genocide and complicit in the crime are punishable under the convention whether they are constitutionally responsible rulers, public officials or private individuals, those guilty of genocides shall be punished according to the convention. The convention came into force on 12th January, 1951.

The United Nations convention of genocide, 1948, makes international crime of acts aimed at destroying in whole or part, a national ethical or racial groups such punishable whether committed by rulers of States, public officials or private individuals.

Since 1965, there has been five instances of genocide of massive ethnic killings in Indonesia against the china in 1965, in Nigeria against the ibos, in 1968, in Pakistan against the Bengalees in 1971 in Barundi against the Hutans in 1972, and in 1972 and in Iraq against the Kurds since 1975. Pakistan Iraq have angered to the Genocide convention.

Establishment of united Nations High commissioner for Refugees UNCHR.

As has been said above the commission adopted and establishment by the League of Nations, was admitted to the High Commissioner for refugees under the Nations in 1950 by the General Assembly. This establishment was adopted by Resolution No. 428(v) on December 14, 1950.

Acting under the Auspices of the General Assembly of the United Nations, the High Commissioner performs functions relating to rescuer and establishment of the refugees and faces the permanent solution of the problem of refugees. He has to follow the policy decision of the General Assembly and the Economic and Social Council. He has to afford the following protection to the refugees within his jurisdiction,

(i) by making compliances of the International covenents examining their utility and supporting them and also proposing amendments thereto as he finds reasonable and practicable.

(ii) by entering into special contracts with governments in order to improve and reform the position of the refugees

(iii) by assisting in the efforts done in governmental or private capacities by government or different social organizations, in order to give impetus to their safe return to their homelands.

(iv) By getting the refugees entrance in the territory of a state;

(v) by getting the consent of the detaining state authorities for letting the refugees to have assets with them

(vi) by getting the desired information from the state governments of the relevant laws and regulation relating to the refugees their number in the state in which they are living

(vii) by remaining in close contacts with private organizations which are working for the relief of the refugees

viii) by establishing close contracts with the private organizations which are working for the relief adjustment with their refugees activities

ix) besides the above, the High commissioner may perform or do any work for the benefit and adjustment of the refugees for their return to their homeland or resettlement. He will provide for a find to be establish of the moneys be obtained from the refugees or for the refugees from other source and may disturbed the amounts in public agencies for assistance and relief of the refugees. He may appeal to the state government for money for the refuges welfare relief etc. without taking any permission from the central government

Selection of the High Commissioner for Refugees (UNCHR)

After being nominated by the Secretary General of the United Nations the High Commissioner for refugees is selected by the General Assembly. The conditions of is appointment which is proposed by the Secretary General is approved by the General Assembly. The terms of office is five years. This office is situated in Geneva, Switzerland, Secretary General has an executive committee of the commissioner programme. The committee is organized by various government multiple in number. The committee audits the budget of commissioner and gives its advice about the protection and relief of the refugees; It also organizes the conference of the commissioner every year in October in Geneva. It approves the programmes of the High commissioner for the calendar year beginning on 1st January and ending on 31st December There is also standing committee which meets at least four times a year. The protection of refugees is the main cause for the existence of the High commissioner for refugees in the United Nations. The commission invents or discovers permanent solution or relief to the refugee problem.

Model Question

Explain the rights of refugees.

THE NATIONAL HUMAN RIGHTS COMMISSION AND STATE HUMAN RIGHTS COMMISSION

The Government of India has passed the Protection of Human Rights Act in 1993 and implemented on 12-10-1993. On the basis of the Act, the National Human Rights Commission was established in 1993.

Constitution of a National Rights Commission

1) The central Government constitute the National Human Rights

2) The Commission consists of the following members a chairperson who has been a chief justice of the supreme Courts; One Member who is or has been a judge of the supreme court; One member who is or has been the Chief Justice of a High court. Two members to be appointment from amongst persons having knowledge of or practical experience in matters relating to human rights and The chairperson of the national commission for Minorities, the National Commission for the scheduled Castes and scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission.

There shall be a secretary -General who shall be the Chief Executive officer of the Commission. The headquarters of the commission shall be at Delhi and the commission may, with the previous approval of the Central Government, establish officers at other places in India.

Appointment of Chairperson and other Members

The chairperson and other Members shall be appointed by the president by warrant under his hand and seal.

The Prime Minister is the Chairperson. The members are Speaker of the House of the People; Minister in-charge of the Ministry of Home Affairs in the government of India; Leader of the Opposition in the House of the People; Leader of the opposition in the Council of States. Deputy Chairmen of the Council of States,

Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

Member of the Commission may be removed under the following conditions.

Subject to the provisions .of sub-section 92) the chairperson or any other Member of the Commission shall only be removed from his official by order of the president on the ground of proved misbehavior or incapacity after the Supreme Court, on reference being made it by the President as an insolvent; engages during his term of office in any paid employment out side the duties of his office is unfit to continue in office by reason

of infinity of mind or body; is of unsound mind and stands so declared by a competent court, and is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

Term of office

Chairperson shall hold office for a term of five years or until he attains the age of seventy years, whichever is earlier, members shall hold office for a term of five years and shall be eligible for re- appointment for another term of five years. Provided that no member shall hold office after he has attained the age of seventy years.

On ceasing to hold office, a chairperson or a Member shall be ineligible for further employment under the Government of any state.

Member to act as chairperson or to discharge is functions in certain circumstances

In the event of the occurrence of any vacancy in the office of the chairperson by reason of his death, resignation or otherwise, the president may, by notification, authorize one of the members to act as the Chairperson until the appointment of a new chairperson to fill such vacancy and

When the chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the members as the president may, by notification, authorize in these behalf, shall discharge the functions of the Chairperson until the date on which the chairperson resumes his duties.

Procedure of the Commission

The Commission meets at such time and place as the chairperson may think fit. The commission shall regulate its own procedure. All orders and decision of the commission shall be audited by the secretary general or any other officer of the Commission duly authorized by the chairperson in this behalf.

Staff of the Commission

The central Government shall make available to the commission an officer of the rank of the secretary to the Government of India who shall be the secretary - General of the commission; and Such police and investigative staff under officer not below the rank of a Director general of Police and such other officers and staff as may be necessary for the efficient performance of the function of the Commission Subject to such rules as may be made by the Central Government in this behalf, the commission may appoint such other administrative, technical and scientific staffs as it may consider necessary

Function and Powers of the Commission

Functions of the commission

The commission shall perform all or any of the following functions, namely:

(a) inquire, suo moto or on a petition presented to it by a victim of any person on his behalf, into complaint of

(i) violation of human rights or abetment thereof or

(ii) negligence in the prevention of such violation

By a public servant

(b) intervene in any proceedings involving any allegation of violation of human rights pending before a court with the approval of such court;

(c) visit, under intimation to the state Government, any jailor any other institution under the control of the state Government, where persons are detained or lodged for purposes of treatment, reforming or protection to study the living conditions of the inmates and make recommendations there on;

(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.

(e) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommended appropriate remedial measures.

(f) Study treaties and other international instruments on human rights and make recommendations for their effective implementation

(g) undertake and promote research in the field of human rights

(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

(i) encourage the efforts of non- governmental organizations and institutions working in the field of human rights.

(j) such other functions as it may consider necessary for the protection of human rights

Powers relating to inquiries

(1) The Commission has power to inquiring into complaints and have all the powers of a civil court trying a suit under the code of civil procedure, 1908, and in particular in respect of the following matters, namely

a) summoning and enforcing the attendance of witnesses and examine them on oath;

b) discovery and production of any document

c) receiving evidence on affidavits

d) requisitioning any public record any public record or copy thereof from any court or office.

e) issuing commissions for the examination of witness or documents

f) Any other matter which may be prescribed

Investigation Procedure

(1) The commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilize the services of any officer or investigation agency of the Central Government, as he case may be

(2) For the purpose of investigation into any matter pertaining to the inquiry, any officer or agency whose services are utilized subject to the direction

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof then from any office.

Persons likely to be prejudicially affected to be heard If, at any stage of the inquiry, the commission

(a) considers it necessary to inquire into the conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry;

it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence provided that nothing in this section shall apply where the credit of a witness is being impeached.

Inquiry into Complaints

The commission while inquiring into the complaints of violation of human rights may call for information or report from the Central Government or any state Government or any other authority or organization subordinate thereto within such time as may be specific by it. The commission will decide if the information or reports is not received within the time stipulated by the commission, it may proceed to inquire into the complaint on its own;

On receipt of information or report the commission is satisfied either that no further inquiry is required or that required action has been initiated or taken by the concerned government or authority, it may not proceed with the complaint and inform the complaintment accordingly.

Steps after Inquiry

The commission may take, any of the following steps upon the completion of an

inquiry held under this Act namely:

(1) where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by public servant, if any recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the commission may deem fit against the concerned person or persons;

(2) approach the Supreme court or the High Court concerned for such directions, orders or writs as that court may deem necessary;

(3) recommended to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the commission may consider necessary;

(4) subject to the provisions of clauses

(5) provide a copy of the inquiry report to the petitioner or his representative

(5) the commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the commission may allow forward its comments on the report, including the action taken or proposed to be taken thereon, to the commission

(6) the commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any and the action taken or proposed to be taken by the concerned government or authority on the recommendations of the commission.

Procedure with respect to Armed Forces

(1) Notwithstanding anything containing in this Act, while dealing with complaints violation of human rights by members of the armed forces, the commission shall adopt the following procedure namely:

(a) it may, either on its own motion or on receipt of a petition seek a report from the central Government

(b) after the receipt of the report, it may either not proceed with the complaint or, as the case may be, make its recommendations to that Government

(2) The Central Government shall inform the commission of the action taken on the recommendations within three months or such further time as the commission may allow.

(3) The commission shall publish its report together with its recommendations made to recommendations.

(4) The commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representation.

Annual and special reports of the commission

(1) The commission shall submit an annual report to the Central Government and to the state government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The Central Government and the State Government as the case may be, shall cause the annual and special reports of the commission to be before each house of Parliament or the state Legislature respectively as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the commission and the reasons for non- acceptance of the recommendations, if any.

The Committee recommendations are recommendary and these were taken with keen consideration by the Government.

Model Question

Explain the structure and functions of National Human Rights Commission

STATE HUMAN RIGHTS COMMISSIONS

State Human Rights Commission is established by the State Government to protect the Human Rights of citizens. It is in operation from 1994 onwards in many States.

Constitution of State Human Rights Commissions

State Governments may constitute State Human rights commissions in their states

(2) The State commission shall consist of

a) a chairperson who has been a chief justice of a High Court

b) one member who is, or has been, a judge of a High Court

c) One Member who is, or has been, a district judge in that state;

d) Two members to be appointed from amongst persons having knowledge of, or practical experience in matters relating to human rights.

(3) There shall be a secretary who shall be the Chief Executive Officer of the State Commission and shall exercise such powers and discharging such functions of the state commission as it may delegate to him.

(4) The headquarters of the state commission shall be at such place as the state government may by notification, specify

(5) A state commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in list II and List III in the seventh scheduled to the Constitution

Appointment of Chairperson and other Members of State commission

(1) The chairperson and other members shall be appointed by the governor by warrant under his hand and seal

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a committee consisting of .

(a) the Chief Minister - Chair person

(b) speaker of the Legislative Assembly - Member

(c) Minister-in-charge of the Department of Home, in that state - Member

(d) Leader of the opposition in the Legislative assembly - Member

Provided further that where there is a legislative council in a state, the chainman of that council and the-leader of the opposition in that council shall also be members of the committee.

Provided also that no sitting judge of a high court or a sitting (district judge shall be appointed except after consultation with the chief justice of the High Court of the concerned state.

(2) No appointment of chairperson or a member of the state commission shall be invalid merely by reason of any vacancy in the committee.

Removal of a Member of the State Commission

(1) The chairperson or any other member of the state commission shall only be removed from his officer by order of the president on the ground of proved misbehaviour or incapacity after the supreme court, on a reference being made to it by the president, has inquiry held in accordance with the procedure prescribed in that behalf by the Supreme court, reported that the chairperson or such other Member, as the case may be, ought on any such ground to be removed

(2) No withstanding anything in sub-section (1), the president may be order remove from office the chairperson or any person if the chairperson or such other member, as the case may be

(a) is adjusted an insolvent

(b) engages during his term of office in any paid employments outside the duties of his officer; (or)

(c) is unfit to continue in office by reason of infirmity of mind or body (or)

(d) is of unsound mind and stands so declaration by a competent court (or)

(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the president involves moral turpitude.

Term of Officer Members of the State Human Rights Commission

(1) A person appointed chairperson shall hold officer for a term of five years or until he attains the age of seventy years whichever is earlier

(2) A person appointed as a member shall hold office for a term of five years and eligible for re-appointment for another term of five years.

(3) On ceasing to hold officer chairperson or a member shall be ineligible for further employment under government of a state or under the government of India.

Terms and Services of Members of the State Human Rights Commission

The salaries and allowances payable to, and other terms and conditions of service of shall be such as may be prescribed by the state government.

Officers and other staff of the State Human Rights Commission

(1) The State Government shall make available to the Commission

(a) an officer not below the rank of a secretary the state government who shall be the secretary of the state commission; and

(b) such police investigation staff under an officer not below the rank of an inspector general of police and such other officers and staff as may be necessary for the efficient performance of the functions of the state commission.

(2) subject to such rules may be made by the state government in this behalf, the State Human Rights Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

Annual and special reports of the State Human Rights Commission

(1) :the State commission shall submit an annual report to the government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred toll submission of the annual report

(2) The State government shall cause the annual and special reports of the state commission to be laid before each house of state legislature where it consists two houses, or where such legislature consists of one house, before that house along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptances of the if any.

Constitutional of Special Investigation Teams

Notwithstanding anything containing in any other law for the time being in force, where the government considers it necessary so to, it may constitute one or more special investigation teams, consisting of such officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of violation of human rights

Protection of action taken in good faith

No suit other legal proceedings shall lie against the central government, state government, commission the state commission or any member thereof or any person acting under the direction either of the central government, state government commission or the state commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or any order made there under or in respect of the publication by or under the authority of the Central Government, State Government, Commission or the State Commission of any report paper or proceedings.

Members and Officers to be Public Servants

Every Member of the Commission, State Commission and every officer appointed or authorized by the Commission or the State Commission to exercise functions are deemed to be a public servant.

Model Question

Write briefly on State Human Rights Commission.